



FIJI LAW REFORM COMMISSION

2003 FINAL REPORT ON THE REVIEW OF THE LIQUOR ACT CAP.192

Liquor Law and Policies The Case for Change

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LIQUOR LAWS AND POLICIES

THE CASE FOR CHANGE

Fiji Law Reform Commission Final Report to the Attorney General and Minister for Justice on a 2002/2003 evaluation to determine areas for change within Fiji's Liquor laws in the light of present day needs, and to make new recommendations.



FIJI LAW REFORM COMMISSION

9TH MAY, 2003

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TERMS OF REFERENCE:

To enquire into and report on the laws relating to Liquor with a view:

- To examine and evaluate the current laws and policies relating to the sale, supply and consumption of liquor in Fiji in the context of the need for review of the same. In carrying out these tasks, to also take into consideration the W Cruickshank and Sir Ian Thomson Reports; and
- To report and to recommend ways in which such policies and laws may be improved upon.

FINDINGS

- There was little support for total deregulation of the sale and supply of alcohol in Fiji. There were many calls, however, for liberalisation, especially of trading hours.
- Convincing arguments were advanced for:
 - i) harsher penalties for infringements of the Act;
 - ii) accelerating the processing of applications for licences;
 - iii) increases in licence fees;
 - iv) greater consultation between licensing authorities and the community in determining licences;
 - v) better representation of community organisations and industry stakeholders in appointments to membership of licensing authorities;
 - vi) widespread awareness programmes on the effects of alcohol abuse.
- Strengthening the licensing system would help ensure genuine operators participated in the industry. Measures for this would include:
 - stipulating broader, more comprehensive conditions for obtaining licences;
 - setting professional standards, such as certification from a recognised institution
 - establishing a licensee's experience, knowledge and understanding of his/her obligations under the Act.
- Effectiveness of the Act as a legal guide has diminished through lack of reform. Respect for laws relating to the sale of alcohol has been seriously eroded through weak enforcement, allowing illegal trading to flourish.
- Policy framework of the Act remains sound. Continuing effectiveness/relevance of the legislation, however, depends on the Government's willingness to consider, approve and implement recommended changes.

SUMMARY OF RECOMMENDATIONS

Licensing Authorities

- That the present Divisional Liquor Tribunals be renamed Divisional Licensing Authorities (DLAs), and be located at the Commissioner's office of that division. The Central Liquor Board be renamed the Fiji Liquor Licensing Authority (FLLA), and be situated at the Attorney General's office in Suva.
- That the DLAs receive and determine all applications for licences, and related applications, from their respective divisions.
- That the Secretary of the DLA processes and determines all licences and related applications, and renewals for licences. Where the secretary is unable, for whatever reason, to determine an application, that application is submitted to the FLLA for final determination.
- That the main function of the FLLA be to oversee administration of the Act, and advise the Minister on matters of policy and administration. It may also provide guidance and advice to the DLA in relation to granting of licences, and determine applications referred to it by the DLA. The FLLA will comprise a magistrate, as Chair, and three or four other members appointed by the Minister.

Particulars of Licences

- That the Act or Regulations prescribe particulars and documents required to accompany the application for a licence.

Guidelines for Determination of Applications

- That the Act provides guidelines to be used by any licensing authority in determining applications under the Act.

Disqualification grounds for Applicants

- That the criteria contained in section 18 of the Act be expanded. Non residents and people not directly related to, or involved in the business to which a licence is attached, be disqualified from obtaining a licence.

Licences

- That liquor licences in Fiji be classified as: On-Licence, Off-Licence, Club Licence, and Special Licence.

Club Licence

- That Clubs registered under the Registration of Club Act 194 must apply for the appropriate licence under the Liquor Act where they intend to sell alcohol on their premises, and be governed by the conditions of that licence.

Illegal Sale of Alcohol

- That there be zero tolerance for bootleggers;
- That there be harsher penalties for illegal traders;
- That additional resources, more powers, be given to the Police to combat illegal trading;
- That more opportunities be given to the public to buy alcohol legally, thus reducing the potential for bootlegging.

Trading Hours

Off-Licence

- That existing hours, 8am to 6pm, be replaced by 8am to 9pm trading daily, including Public Holidays. No trading on Christmas Day and Good Friday.
- That a three-hour trading window be introduced on Sundays from 10am to 1pm. The Sunday concession is to enable the public to buy alcohol legally, rather than through illegal sellers, as is presently the case.

Night Club Licence

- That, in order to regularise the present confused situation, Night Club trading hours be extended by one hour from the present 5pm to 1am, to 5pm to 2am, Monday to Saturday, including Public Holidays, but excluding Sunday night, Good Friday and Christmas Day.

Restaurant Licence

- That the present 11am to 11pm trading hours remain.
- That the existing restrictions on alcohol sales from 2.30pm to 6pm be lifted.
- That the current stipulation that alcohol be served with meals remain and be properly enforced.

Publicans Licence

- That the existing hours of 11am to 9pm Monday to Saturday, including Public Holidays, but excluding Sunday, Christmas Day and Good Friday, remain.
- That the existing Saturday 2pm to 4pm closing be abolished.

Private Hotel Licence

- That the current Noon to 2.30pm and 6pm to 11pm, be replaced by 11am to 11pm, any day of the year, in the interests of Fiji's growing tourism industry;
- That the hotels be permitted to sell alcohol on a 24-hour basis to resident guests only;

Special Hours

- That the existing 9pm to 1am be retained;
- That, in order to further promote/develop tourism, conventions, and like trades, the Divisional Licensing Authority be given discretionary authority to, on occasion, authorise operators with accommodation of 50 and more rooms or units to extend opening hours.

Tavern Licence

- That the present operating hours remain, 11am to 9pm.

Licence Fees

- That all fees be increased substantially.

Disciplinary action against licensees

- That a fair system for disciplinary procedures, including suspension of a licence, be included in the Act.

Public Health Act

- That a health inspector with the local government authority may apply for the suspension of a licence where there are reasonable grounds for believing a licensee has failed to comply with requirements relating to public health.

Quota System

- That the present quota system on certain licences be discontinued and market forces be allowed to determine the number of licences.

Geographical distribution of licences

- That the location of a premises be a determining factor in the issuance of a licence, with the National Licensing Authority empowered to make final decisions in this respect.

Gender Issues

- That all discriminatory aspects of the Act relating to gender be eliminated.

Sale of Liquor to Persons under 18

- That Sections 59 and 60 of the Juvenile Act (Cap 56) prohibiting the sale of alcohol to persons under 18 years be incorporated in the Liquor Act.
- That more offences be created against licensees, minors, and others as a deterrent to consumption of alcohol by minors.

- That severe penalties/fines be imposed on licensees/customers for infringements of regulations relating to the sale and supply of alcohol to minors.
- That the Act provide for requirement of documents for proof of age for the purpose of the Act.

Penalties/Offences

- That all monetary and imprisonment maximum penalties contained in the Act be increased by 200 per cent, and more, where this is considered appropriate.

Standards

- That Management certification be adopted. All managers of licensed premises be issued with certificates by the licensing authority.
- That the FLLA (national licensing authority) works with the Fiji National Training Council, and other tertiary institutions, to provide certificate courses for licensees/managers, and staff of licensed premises.
- That no licence be granted to an applicant who does not possess any knowledge of his/her obligations under the licence, and the Act.

Display of Signs, Notices and Licences

- That all licensees be statutorily required to display at all times, at the primary entrance to a premises, a sign stating opening and closing hours for sale of liquor.
- That the licence and its conditions be displayed in a prominent place within a licensed premises at all times.
- That a sign be displayed at all times at the principal entrance to a licensed premises prohibiting persons under 18 years from entering the premises.
- That a sign be displayed at all times inside every licensed premises making it an offence to sell or supply to, or to obtain liquor on behalf of, a person under 18 years of age.

Enforcement

- That the Police be given additional resources, training and powers to effectively enforce the Liquor laws and help curb abuse.

Social Awareness

- That the FLLA (national licensing authority) works with the industry, the appropriate Government ministries and authorities, social organisations, the media etc, in promoting national awareness of the responsible use of alcohol, and the effects of alcohol abuse.
- That the FLLA explores with the same authorities the establishment of counseling and rehabilitation centres and programmes Fiji wide.
- That primary funding for the social programmes be derived from:
 - i) An annual fee levied on manufacturers of alcohol, and on sales of imported brands of alcoholic drinks. OR
 - ii) A proportion of the revenue that Government raises from existing taxes on alcoholic drinks.
- That the funding involved be sufficient for mounting comprehensive, annual national educational programmes.

BACKGROUND

In May 1984, the Government of the day appointed a 10-member Committee, chaired by Sir Ian Thomson, to undertake a review of the liquor laws and policies of Fiji. The Committee was charged with examining these laws in the light of social and economic change and recommending ways for their improvement. A year later, the Committee submitted a report to Government offering its recommendations for reform.

In September 1991, another review of the Liquor Act was commissioned by the Government. A five-member Committee, headed by Mr William Cruickshank, was appointed to examine and evaluate the liquor laws relating to the sale, supply and consumption of alcohol in Fiji. In addition, it was asked to formulate a policy framework for Government's consideration. This framework would cover principles regulating the sale of alcohol in the country. It would also reflect the social conditions and needs of the time, and for the future. The review committee made 30 recommendations in its report submitted in 1992.

None of the recommendations of either the Thomson Report or the Cruickshank Report have been adopted.

In early 2000, questions were put in the House of Representatives to the Attorney-General and Minister for Justice at the time about the status of the Liquor Act reform and trading hours of restaurant licences. In response, the matter was referred to the Central Liquor Board – one of the country's two main liquor licensing authorities - for its views on whether the recommendations of the Cruickshank Report should be adopted. Pursuant to section 4(1) (f) of the Liquor Act (Cap 192) the Board is responsible for advising the Minister on liquor legislation.

The Board submitted a preliminary report which, although it did not deal with all recommendations of the Cruickshank Report, addressed what it considered were areas requiring urgent attention. These were trading hours of each liquor licence, and reforms to licensing, licence fees, penalties, fines and convictions, law enforcement, legal drinking age, gender bias and alcohol/social awareness programmes. The Board's recommendations were not acted upon. Political upheaval that year also meant the momentum for change to the Liquor Act was lost, once again.

A NEW OPPORTUNITY

A newly-elected Government in late 2001 gave the industry's stakeholders fresh opportunity to make their views known. They received a receptive hearing from the new Attorney General and Minister for Justice. Honourable Senator Qoriniasi Bale had commissioned the Sir Ian Thomson review of the Liquor Act in his capacity as Attorney General and Minister for Justice in 1984, recognising then the need for modification. In mid-2002, as provided for in the Fiji Law Reform Commission Act of 1979, the Attorney General and Minister for Justice referred the matter to the Fiji Law Reform Commission (FLRC) for enquiry and report.

Following discussions with the Attorney-General, Solicitor-General and the Acting Director of Law Reform, I was appointed a Part-Time Law Reform Commissioner to work with the FLRC in making new proposals and recommendations. The Commission would provide me with legal, secretarial, and other relevant support, including the assistance of a Legal Officer, Mr Sotia Coutts. My findings would be submitted to the Attorney General for consideration.

Terms of Reference

As stated at the beginning of this Report, these were:

To enquire into and report on the laws relating to Liquor with a view:-

- vii) To examine and evaluate the current laws and policies relating to the sale, supply and consumption of liquor in Fiji in the context of the need for review of the same. In carrying out these tasks, to also take into consideration the W Cruickshank and Sir Ian Thomson Reports; and
- viii) To report upon its findings and to recommend ways in which such policies and laws may be improved upon.

While the terms of reference are similar to those given to the Thomson and Cruickshank review committees, my report would, in effect, be an amalgam of recommendations from previous reviews that I considered were still valid, and new findings and proposals.

To achieve this it would be necessary to:

- revisit both the Thomson and Cruickshank Reports,
- re-examine their key findings in the light of today's needs,
- identify issues and areas requiring new input from the industry and the community;
- consult with stakeholders for a situation update;
- assimilate and analyse submissions, and
- conduct research of the liquor legislation of some other countries, and relevant documentation.

ISSUES PAPER

To take the pulse of the industry and community, an Issues document was prepared calling for public submissions on a total of 19 issues. Approximately 170 copies of the document were distributed to key industry operators, as well as religious and community groups, political parties, relevant government ministries and organisations, municipal councils and rural local authorities, Provincial Councils, the Chair of the Great Council of Chiefs, Divisional Commissioners and Divisional Police Commanders, Non-Government Organisations (NGOs) and a selection of educational institutions. Issues Papers were also available on request to members of the public. In all, more than 200 documents were distributed.

SUBMISSIONS/CONSULTATIONS

The Commission received a total of 32 written submissions¹. In public consultations in Levuka and the Western and Central Divisions, the Commission heard 29 oral submissions². In places we visited, members of the public also expressed their views informally or in private to me or to Legal Officer Coutts.

Among those who made written and oral submissions were organisations and individuals who have been calling for change since 1984.

The hearings were not meant to be as exhaustive as those of previous reviews. These were offered as additional opportunities for people to meet with the Commission and discuss new or long-standing concerns.

Having said that, it was still a disappointment to the Commission that Non-Government Organisations (NGOs), especially those dealing with social issues and matters affecting the development and welfare of women, children and the family, did not take advantage of this review to make their policies or opinions known. This is despite having been given Issues Papers and being approached by the Commission for their views.

There were no submissions either from any of the major political parties. One party requested an extension to the submissions deadline. An extension was granted but no submission was forthcoming.

Three Christian denominations made written/oral representation. These were the Methodist and Anglican Churches and International Baptist Church (Lautoka branch).

Submissions were also heard from two provincial councils³ - the Lomaiviti Provincial Council through its representative, Mr Mosese Vunivutu, who also submitted as Mayor of Levuka and a former member of the Eastern Divisional Liquor Tribunal. And Mr Jone Nakautoga, a member of the Ba Provincial Council and the Western Divisional Liquor Tribunal.

¹ Annexure 1.

² Annexure 2.

³ Mosese Vunivutu (Lomaiviti Provincial Council); and Jone Nakautoga (Ba Provincial Council).

The deadline for submissions was moved on a number of occasions to accommodate requests for extensions. The final submission to the Commission was from the Fiji Hotel Association. This was received on February 28th, 2003.

Our work for moving the process of reform forward was widely publicized.

DEREGULATION OF THE INDUSTRY

There is a need, at this point, to address the issue of deregulation, or the lifting of controls or regulation on the sale and supply of alcohol to the public.

A notable feature of the recent lobby for Government action to reform the Liquor Act, was the call for total deregulation of the sale and supply of alcohol. Responding to a motion on this in the House of Representatives, the Attorney-General and Minister for Justice referred to a report on the issue from the Central Liquor Board in November, 2001. The Board's observation, in the light of requests it had received for stricter controls on the issuance of licences in certain locations (residential, villages, schools, churches etc,) was that public opinion would most likely favour a strengthening of Fiji's Liquor laws in this respect, rather than deregulation.

The Board was of the opinion that there were two critical arguments in respect of deregulation. One was that the total freeing up of liquor sales would immediately result in a damaging increase in alcohol consumption in a country which already has seriously high levels of alcohol-related problems. The other argument was that open and free sales would put an end to bootlegging, or the illegal sale of alcohol, and assist in producing a more mature public attitude to the consumption of alcohol.

The Board, as a result of its own experience, supported the Cruickshank review committee's observation in 1992, which was that it doubted whether the country would readily accept either total deregulation, or prohibition.

The current review received one submission for total prohibition. This was from the Arya Pratinidhi Sabha of Fiji. The organisation made a similar submission to previous reviews.

LIBERALISATION

Those who support deregulation have been somewhat vague about what they mean. The term “deregulation with balance⁴” has been submitted, but this also has not been fully defined or explained. There are few, if any, suggestions about how deregulation would be implemented and little consideration of, or arguments forthcoming about, the implications for the industry and society as a whole. Perhaps the situation they are advocating might, at this point in time, best be defined as liberalisation?

Our public consultations, and the written submissions we received, revealed no evidence of widespread support for total deregulation. This, in my opinion, was a reflection of the seriousness with which stakeholders viewed such an undertaking and its consequences, without the Government having first done its own exhaustive study of the issue, and necessary measures put in place to ensure least negative impact on the community.

What did emerge from this review was a substantial movement for liberalising or relaxing some of the Liquor laws, especially those relating to trading hours, and for “gradual liberalisation” of the industry through regular reviews of the Liquor legislation. (Some industry stakeholders recommended that the liquor laws, particularly those relating to the sale, supply and consumption of alcohol, be reviewed every five (5) years.)

Similar calls were made during the Thomson and Cruickshank reviews and both committees made recommendations in support of revised opening hours for some licences. This issue is discussed later in this Report.

⁴ Hon. Ofa Swann, Deputy Leader of Opposition, House of Representatives.

NEW DIRECTION

The following is an overview suggesting the direction which needs to be taken in some key sections of the Liquor legislation leading to new policies.

Purpose of Liquor Act

In my view, the primary objectives of our Liquor laws should be to:

- Provide a reasonable and workable system of control for the sale and supply of alcohol to the public;
- Promote efficiency and a high standard of professionalism within the industry;
- Help bring a fair financial return to all concerned;
- Serve the interests of the economy, especially the tourism industry;
- Help reduce alcohol abuse.

The Act is supposed to be the means for achieving this. Over the years, however, its effectiveness as a legal guide and point of reference for the industry and society has diminished considerably. A major contributing factor, as we have seen, has been the inability, for whatever reason, of successive governments to enact necessary reform. Respect for, and compliance with, some sections of the legislation are now seriously threatened.

Our under-resourced Police Force, the primary law enforcement agency, struggles, unsuccessfully, to stem the rising tide of bootlegging. This is the illegal sale of alcohol by non-licence holders, and the sale of alcohol outside trading hours by many licensed operators - big and small.

To reverse a fast-deteriorating situation and restore confidence in the Act's ability to direct, promote and protect the interests of all concerned, and discourage illegal behaviour, the laws must be strengthened or changed, and greater resources devoted to equipping and training the Police for the task of effective enforcement.

I agree with the Cruickshank review committee's finding that the policy framework of the Act remains fundamentally sound. However, its continued relevance for contemporary commercial and social needs and expectations rests largely on Government's willingness to give priority consideration and approval to implementation of recommended improvements to appropriate sections within the legislation.

The value of the reforms envisaged should be seen in the context of providing enlightened legislation, better enforcement and promoting greater social responsibility.

GUIDELINES FOR CHANGE

A balanced approach was required to take account of the interests of licensees, the consumers, the police, and the public at large. The following guidelines were used in the formulation of recommendations necessary to accommodate the interests of all parties concerned.

- a. The need to satisfy the high demand for extension to trading hours;
- b. The need to ensure licences are available only to persons demonstrating their willingness to abide by the Act, and the terms and conditions of the licence they seek, or hold;
- c. The need to assist the Police in the enforcement of the Act, and the prevention of crimes committed under the Act;
- d. The need to deter criminal offences relating to the sale, supply and consumption of alcohol;
- e. The need to educate and inform the public about the effects of alcohol abuse.

RECOMMENDATIONS

Broad recommendations and suggested direction regarding some key sections of the Act follow:

LICENSING AUTHORITIES

A total of 19 submissions were received on the issue of licensing authorities: in particular, whether the current structure, composition, and functions of the present authorities (Central Liquor Board and Divisional Liquor Tribunals) should be changed.

Structure

Twelve of the 19 (63%) submissions focused on the structure of the authorities. 66% of these recommended change. The remaining 34% were satisfied with the current system.

Two options for change were suggested. One was to retain the existing two-tier arrangement, but change the authorities' respective names to reflect their role and functions - Alcohol Control Commissions and Alcohol Advisory Council⁵, or Divisional Liquor Boards and Central Liquor Board⁶. Their functions would alter, with the Commission or the Divisional Liquor Board determining all applications for licences, and the Council or the Central Liquor Board assuming an advisory role both to the Minister and the divisional licensing body.

The other option was to abolish the present authorities and establish a single body to administer the Act in its entirety⁷. This organisation would be independent, and its professional staff fully dedicated to the administration of the Act. Such an operation would ensure speedy processing of applications, and total control of, and consistency in the administration of the Act. Such an organisation, it was submitted, would also eliminate communication breakdowns and allow for complete availability of information in the administration of the Act. It would also provide sound policy advice to the Minister.

⁵ Sir Ian Thomson Report.

⁶ Anglican Church of Fiji.

⁷ Hon. Ofa Swann, Leo Smith, Don Duncan, Mary Montu, Liam Hindle/Peter Johnson.

Composition

The majority of those submitting on this issue believed the composition of the current authorities did not reflect some key sections of society or the industry, for example, Provincial Councils, local government authorities etc, whose views and opinions they considered were necessary for proper administration of the Act. They believed membership should comprise those familiar with, and responsive to, the needs and concerns of towns/villages/settlements in their geographical areas of operation. Others who should be considered were the manufacturers, licence-holders and relevant government departments, or Ministries. These sentiments were shared by some members of the existing authorities⁸, the inspection authorities⁹, enforcers of the Act¹⁰, and industry stakeholders.¹¹

Functions

There was general agreement by those in favour of two authorities that their roles and functions be separate and distinct. One would have full responsibility for determining applications, and be located in every division. The other would be the national body tasked with providing direction and guidance to the divisional authority in the carriage of its work. The national authority would hear and determine appeals on decisions made by the divisional organisation, as well as be responsible for making policy decisions and overseeing administration of the Act¹².

Other Jurisdictions

New Zealand

New Zealand has a two-tier licensing authority arrangement. At the district level are the District Licensing Agencies (DLA), or local licensing authorities¹³. The principal administrative officer is the secretary for the DLA¹⁴. The main functions of the DLA include consideration and determination of licence applications, renewal of licences, consideration and determination of manager's certificates, and renewal of manager's certificates¹⁵.

⁸ Mr. Mosese Vunivutu; Mr. Jone Nakautoga (see 1)

⁹ Mr. Rajendra Pratap, Director Health Service, Lautoka City Council.

¹⁰ Fiji Police Force

¹¹ Carlton Brewery

¹² The demarcation is well stated in the submission of the Ministry of Commerce, Business Development and Investment

¹³ Section 99, Sale of Liquor Act 1989.

¹⁴ Section 102, Sale of Liquor Act, 1989.

¹⁵ Section 100, Sales of Goods Act, 1989.

All applications in respect of the above, and other applications, are made to the DLA¹⁶. The DLA appoints its own inspectors for inspection of premises¹⁷. Where no objections or reports in opposition to the application are filed, the DLA may either grant the application on paper or convene a public hearing to consider the application. Where objections are filed, it must convene a public hearing and consider the application¹⁸.

Where the DLA is unable to make a decision, the complete file is sent to the Liquor Licensing Authority, the national authority, for determination¹⁹.

The national authority is the Liquor Licensing Authority (LLA), which has 3-4 members, of whom one is a District Judge who acts as Chair²⁰. The LLA's main functions are to determine applications that are referred to it by the DLA, and consider and determine appeals from decisions of the DLA²¹. Other functions of the LLA include advising people of the appropriate DLA with which to file their applications²², and issuing statements to the DLA on the general administration of the Act, or policies to be followed in the administration of the Act²³.

¹⁶ Sections 9, 31, and 55,76, Sale of Liquor Act, 1989.

¹⁷ Section 103, Sale of Liquor Act, 1989.

¹⁸ Section 106, Sale of Liquor Act 1989.

¹⁹ Sections 12, 21, 34, 44, 58, 67, Sale of Liquor Act 1989.

²⁰ Section 85, Sale of Liquor Act 1989.

²¹ Section 91, Sale of Liquor Act 1989.

²² Section 93, Sale of Liquor Act 1989.

²³ Section 96, Sale of Liquor Act 1989.

New South Wales

Like NZ and Fiji, NSW also has a two-level licensing authority system.

The main licensing authority is the Licensing Court of NSW²⁴. The LC is situated in Sydney and 68 other places within the state of NSW²⁵. Each LC is comprised of 3 or more appointed magistrates.

Each LC has a Registrar. The Principal Registrar is located at the Sydney LC. All applications are made to either the Principal Registrar or the registrar, depending on where the application is made. Once an application is received, the Principal Registrar or Registrar must fix a hearing date and forward a copy of the application to the Commissioner of Police and the Director of Liquor and Gambling. The Director of Liquor and Gambling investigates the application and may consult the Commissioner of Police for information regarding the applicant. The investigation must be completed within 6 months of filing of the application.

The national body is called the Liquor Administration Board. Its principal functions are to review the operation of the Act and make recommendations to the Minister, conduct investigations instructed by the Minister, review the standards of licensed premises, receive submissions from any person on the operation of the Act, and impose, vary or revoke conditions under its jurisdictions²⁶.

The central concern raised during the recent consultations was the need for an authority that discharged its duties and functions expeditiously. There was need also for a system and procedures for processing and determining applications in a timely manner. Such procedures need not involve public hearings of applications, unless circumstances required. Applications should be determined on the basis of information supplied, and applicants notified in writing of the result²⁷. A two-tiered system required clear and separate functions under the Act to avoid duplication of work..

²⁴ S.7, Liquor Act 1982.

²⁵ Regulation 13, Liquor Regulation, 1996.

²⁶ S.74, Liquor Act 1982.

²⁷ Submission to the Cruickshank Committee

Suggested Structures, Composition and Functions of Licensing Authorities for Fiji

Fiji should retain its present two-tier licensing authority system. The Divisional Liquor Tribunal should be retained, but be named the Divisional Licensing Authority. Its headquarters should be the office of the Divisional Commissioner. Its main functions would include processing and determining applications for licences forwarded from the respective division. Where it is unable to make a definitive determination, it shall forward the application to the Fiji Liquor Licensing Authority for final determination.

The Central Liquor Board should be retained, but be named the Fiji Liquor Licensing Authority. It should be located at the Office of the Attorney General. Its main functions would include advising the Minister on policies and administration of the Act. It may also advise the Divisional Licensing Authority on guidelines and policies relevant to the discharge of its functions, and determine applications sent to it by the DLA.

Membership of the FLLA should comprise a magistrate, appointed by the Chief Magistrate, and three or four other members appointed by the Minister. The magistrate should chair the FLLA. Each member holds office for an appropriate number of years, to ensure continuity.

There should also be a full-time Secretary attached to the FLLA.

To properly discharge their functions, each authority may appoint its own inspector from within their respective offices or employ a qualified inspector from outside.

A system similar to that used in New Zealand may be adopted with regard to processing of applications. All applications must be made to the secretary of the DLA. If no objection is filed in relation to all or any application, the secretary may either approve the application in writing or call a public hearing to determine the application. Where objections are filed, the secretary must convene a public hearing and determine the application, unless the objection is withdrawn, or the nature of the objection does not merit a hearing.

Where the DLA is unable to make a determination on any application, it must send the application to the national body for a final decision.

Recommendation:

- That the Divisional Liquor Tribunal be renamed the Divisional Licensing Authority. Its functions be modeled, as far as it is appropriate for Fiji, on those of the District Licensing Agency in New Zealand. Its primary functions would be to consider and determine applications from its respective divisions for the grant of licences issued under the Act. Additional functions may include conducting inquiries and writing reports required of it by the Fiji Liquor Licensing Authority. The office of the DLA be situated in the Divisional Commissioner's office and be funded through its budgetary allocation by the Government. The Licensing Officer within the divisional office is the Secretary of the DLA, who shall be appointed to that position by the Minister for Local Government.

 - That the Central Liquor Board be renamed the Fiji Liquor Licensing Authority, and be situated at the Office of the Attorney General in Suva. The FLLA be comprised of a magistrate appointed by the Chief Magistrate, and three or four other members appointed by the Minister. Its main functions be to advise the Minister on policies and administration of the Act. It may also provide guidance and advice to the DLA on matters relating to determination or processing of licenses or on the administration of the Act.

 - That the FLLA determine applications referred to it by the DLA.

 - That the functions of granting provisional approvals for, and renewals of, licences be vested in the DLA.
-

APPLYING FOR LICENCES

A change in procedures for applying for licences, and processing and determining applications is necessary. The current procedures have proved unsatisfactory for many reasons: requirements for public hearings where no objections are made²⁸, long travel to attend public hearings²⁹, lack of application guidelines for new applicants³⁰, and long delays in processing and determining applications. A system that promotes speedy results is needed. For the licensing authority, this is documentation that fulfils requirements of the Act and includes all approvals and clearances from relevant authorities.

The position in some Australian states³¹ is similar to Fiji's present system. Applications are forwarded to the licensing authority, which then conducts its investigations. The application is called before the licensing court, which then grant the licences.

The systems in New Zealand and some Australian states e.g. Capital Territory and Queensland, are similar. Applications are made to a specific person within the licensing authority who may determine the application without a public hearing. Applicants are required to provide specific information and documents in support of their applications. Applicants are notified of the result of their applications in writing.

A system similar to that of New Zealand, Australian Capital Territory, and Queensland appears satisfactory to both the licensees and the licensing authorities. The applicants are freed from the burden of traveling longer distance to attend public hearings, while the authorities are spared the time and expense of organising and undertaking inspections of premises.

Recommendation

- That responsibility be placed on every applicant to obtain and provide all necessary approvals, consents and information from relevant authorities as part of the application process.
- That the Act clearly articulates the necessary approvals, consents and information that an applicant must obtain in support of his/her application.

²⁸ Cruickshank Report

²⁹ Mustafa Khattab, John Pierogorva

³⁰ Savusavu Tourism Association.

³¹ New South Wales

- That upon receipt of an application, the Secretary of the DLA may, if he/she considers this necessary, forward copies of the application to the Divisional Police Commander, health inspector of the local government, and fire officer of the Fire Department, for further comment or validation.
 - That upon receipt of the reports of confirmations (if any), the Secretary determines the application on the basis of the information and documents supplied, and advises the applicants in writing of the outcome. The Secretary takes his/her guidance and direction from the guidelines for determining applications in arriving at a decision.
 - That where the DLA is unable, for whatever reason, to determine an application, that application is submitted to the national licensing authority (FLLA) for final determination.
-

PARTICULARS OF APPLICATIONS

It is essential that applicants for licences provide the required particulars with their applications. The quality of documentation, or information provided, will ensure speedy processing of the application, and determination by the authority.

The Liquor Act of Fiji does not provide any assistance in prescribing the nature and type of information that should be required for a proper determination of applications.

Australia and New Zealand

The Liquor Regulations of Australia and New Zealand provide clear guidance to applicants by prescribing the nature of information needed to accompany applications. Under Regulation 5, 8, 11 and 14 of the Sale of Liquor Regulations 1990 of New Zealand, the following common particulars are required:

- a. A photograph of the exterior of the premises or an artist's impression of the exterior of the proposed premises as they will look when they are completed;
- b. A map, or copy of map, showing the location of the premises;
- c. A scale plan showing parts of the premises to be used for sale or supply of liquor; part of the premises that an applicant intends to designate as restricted areas or supervised areas; and each entrance to premises that the applicant intends to designate as principal entrance;
- d. Where the applicant is not the owner of the premises, a written statement from the owner that he/she has no objection to the grant of the licence.
- e. A certificate by the relevant local authority that the proposed use of the premises meets town-planning requirements;
- f. A menu or other indication of the standard and style of food to be provided;
- g. The prescribed fees.

In Queensland³², the following particulars are needed:

- a. A plan of the premises, showing the general layout of the premises.
- b. A plan showing location of the premises, in relation to adjacent premises.
- c. Evidence of the applicant's identity.
- d. Evidence showing that using the premises for the licence is permitted under the planning scheme of the relevant local government.
- e. Evidence showing that sanitary conveniences at the premises complies with the Building Codes of Australia.
- f. For general licence, residential licence, or special facility licence – a typical menu of meals provided.
- g. For on-premises licence where meals are provided – a typical menu of the meals.
- h. For licence other than a club licence or producer/wholesale licence – description of the general and character of the premises.
- i. For licence relating to premises on land – a copy of the registered plan of survey; a copy of the certificate of title for the land or other evidence of the description of the land and identity of the registered owner or lessor; a description of each proposed licensed area of the premises.
- j. For licence relating to premises where entertainment is to be provided – details of type and nature of entertainment; and written assessment about expected acoustic qualities of proposed premises.

Recommendation

- That the Act or Regulations prescribe the nature and type of information needed for proper determination of applications.

³² Regulation 4, Liquor Regulation 2002.

GUIDELINES FOR DETERMINATION OF APPLICATIONS

As in the case for Particulars of Applications, there are no guidelines provided for by the Liquor Act for the exercise of the licensing authority's discretion in determining applications. This leaves the way open for the uncontrolled exercise of discretion, as well as contradictions and inconsistency in decision-making.

Australian and New Zealand

The liquor laws of both countries contain exhaustive guidelines. In making decisions on an application, the registrar of the Liquor Licensing Board of Australian Capital Territory must consider the following matters³³:

- a. Whether the applicant is a fit and proper person to hold a licence;
- b. Whether the premises are fit and proper for the purpose of the licence;
- c. Whether the condition of the crown leases over the premises are appropriate conditions for purpose of the licence;
- d. The applicant's age;
- e. The applicant's understanding of the obligations of a licensee;
- f. Whether the applicant has been convicted of a defined offence;
- g. Whether the applicant has contravened a provision of the Act;
- h. Whether the applicant is an undischarged bankrupt.;
- i. If the applicant is a body corporate – whether the body is in liquidation;
- j. Provision of manual as it relates to the premises.

The Sale of Liquor Act 1989 of New Zealand contains a similar provision wherein the DLA or LLA must consider the following matters³⁴:

- a. The suitability of the applicant;
- b. The days and hours during which the applicant proposes to sell liquor;

³³ Section 52, Liquor Act 1975.

³⁴ Section 13, 35, 79.

- c. The area of the premises that the applicant proposes should be designated as restricted or supervised area;
- d. Steps proposed by the applicant to ensure laws applying to sale of liquor to prohibited persons are observed.
- e. Applicant's proposal relating to sale and supply of non-alcoholic refreshments and food; and sale and supply of low-alcohol beverages; and provisions of assistance with, or information about alternative forms of transport from licensed premises.
- f. Where applicant is engaged or proposes to engage in the sale or supply of any other goods besides liquor and food, or the provision of any other services – and the nature of those goods or services.

Recommendation

- That the Liquor Act be amended to include guidelines necessary to assist the authorities in the fair and proper determination of applications.
-

DISQUALIFICATION OF APPLICANTS

There were recommendations received for disqualification criteria contained in section 18 to be extended. The extension was considered necessary to ensure no licences were granted to persons who do not have an interest in the business of sale and supply of liquor, or who are not available for the day-to-day running of the business, or who are likely to violate the terms and conditions of the licence. The following inclusions were suggested:

- persons with previous convictions under the Act³⁵;
- persons who are not resident in Fiji³⁶;
- persons who are not directly involved in the administration of the business to which the licence relates³⁷.

The Act must prevent licences being granted to persons who will or could likely use the licence unlawfully, or persons who do not have sufficient interest in the operation of the licence.

In preventing unlawful use of licences, intentionally or otherwise, there are calls to increase the age limit of persons under section 18. A 21-year-old is seen as too young to be engaging in the business of sale and supply of liquor. Some have suggested increasing the minimum age limit to 25.

New South Wales

The minimum age for an applicant under the Liquor Act 1982 is 18 years. An applicant is also disqualified from obtaining a licence where he/she has been previously disqualified from holding a licence, or who holds a suspended licence³⁸.

The minimum age in New Zealand³⁹ is set at 20 years.

³⁵ Ministry of Tourism, Fiji Police Force, Carlton Brewery.

³⁶ Commissioner Central Division.

³⁷ Peter Johnson, Liam Hindle

³⁸ Section 36.

³⁹ Section 8, 30, 54, 75.

- The industry must be protected from people who do not have sufficient or genuine interest in the business of selling and supplying of liquor, and who are not likely to abide by the terms and conditions of their licence. In Fiji, it is rare to find a 21-year-old in a senior management position. The recommendation to increase the age limit to 25, therefore, is a persuasive one.

Recommendation

- That the current criterions contained in section 18 be increased.
 - That the following person be disqualified from holding a licence under the Liquor Act :-
 - (i) an applicant who does not have any financial interest, or who does not hold a senior management or leadership position in the business to which the licence applies;
 - (ii) an applicant who is not resident in Fiji;
 - (iii) an applicant who holds a suspended licence or who is presently disqualified from holding a licence.
-

LICENCES

There are nine types of licences available under the Act:

- Publicans
- Restaurant (Restaurant and Night Club)
- Special Hours
- Off Licence
- Private Hotel
- Occasional (for special occasions)
- Tavern
- Packet (for sea-going vessels)
- Aerodrome.

The Act also caters for the issuance of a Liquor licence to Registered Clubs for the sale of liquor. The operations and opening hours of these clubs, however, do not come under the Liquor Act, but the Registration of Clubs Act (Cap 194). Opening and closing hours are determined by club members and are submitted for information to the Divisional Commissioner in which the premises are located.

Submissions

There was general dissatisfaction with the classification of licences under the Act. Varying submissions have been received on the:

- Need to meet future development⁴⁰;
- Need to reduce and generalise licences⁴¹;
- Need to separate Restaurant and Night Club licences;
- Need for more licences⁴²;
- Need to simplify the licences for ease of comprehension, choice and enforcement⁴³;
- Need to create specific licences for specific businesses or premises⁴⁴;
- Need to maintain current numbers and classification⁴⁵.

Other Jurisdictions

New Zealand

There are four licences available under the New Zealand Sale of Liquor Act 1989. They are:

- a. On Licences⁴⁶ - authorising sale and supply for consumption on the premises or conveyance.
- b. Off Licences⁴⁷ – authorising sale and delivery of liquor from or on premises for consumption off the premises;
- c. Club Licences⁴⁸ – authorising sale and supply of liquor for consumption on the premises to members of the club or guest of a member while accompanied by the member.

⁴⁰ Carlton Brewery

⁴¹ Anglican Church, Dr. Arun Sharma, Robert Griffin, Peter Johnson/Liam Hindle

⁴² Hon. Ofa Swann, Mr. Peter Forster

⁴³ Mr. Jone Nakautoga

⁴⁴ Mr. Leo Smith

⁴⁵ Methodist Church of Fiji, Mosese Vunivutu.

⁴⁶ Section 7.

⁴⁷ Section 29.

⁴⁸ Section 53.

- d. Special Licence⁴⁹ – authorising sale and supply on the premises to persons attending any occasions or events for which the licence was obtained.

Australian Capital Territory

Five licenses are available under the Liquor Act 1975:

- a. General Licences⁵⁰ – authorising sale of liquor on the premises for consumption on and off the premises.
- b. On Licences⁵¹ – authorising sale of liquor on the premises for consumption on the premises.
- c. Off Licences⁵² – authorising sale of liquor on the premises in sealed containers for consumption off the premises.
- d. Club Licences⁵³ – authorising clubs to supply liquor on the premises to members of the club, and guests of the members when the member is present for consumption off the premises.
- e. Special Licence⁵⁴ – authorising sale of liquor for consumption on the premises and at approved times.

⁴⁹ Section 73.

⁵⁰ Section 45.

⁵¹ Section 46.

⁵² Section 47.

⁵³ Section 48.

⁵⁴ Section 49.

Queensland

Seven licences are available under the Liquor Act 1992. They are:

- a. general licence⁵⁵;
- b. residential licence⁵⁶;
- c. on-premises licence⁵⁷;
- d. producer/wholesaler licence⁵⁸;
- e. club licence⁵⁹;
- f. special facility licence⁶⁰;
- g. limited licence⁶¹.

On-premises licence is further classified into eight different licenses as follows:

- a. On-premises (function) licence;
- b. On-Premises (cabaret) licence;
- c. On-Premises (meals) licence;
- d. On-Premises (transport) licence;
- e. On-Premises (presentation) licence;
- f. On-Premises (tourist) licence;
- g. On-Premises (other activity) licence.

⁵⁵ Section 58A.

⁵⁶ Section 61A.

⁵⁷ Section 68.

⁵⁸ Section 80.

⁵⁹ Section 84A.

⁶⁰ Section 92.

⁶¹ Section 94A.

New South Wales

The classification of licences in New South Wales is similar to Queensland. The state has eight (8) Main licences⁶². There are two licences available under On-licence.

Observation

Some submissions received by the Commission called for creation of specific licences, not provided for under the Act⁶³. Some wanted licences with definitions wide enough to cover any unforeseen developments.

There are disadvantages in creating specific licences. They are classified, named and conditioned according to the specific nature of business on the premises to which they are attached. Thus there are nightclub licences, restaurant licences, and the like. A new type of business, which does not operate in a manner similar to existing businesses, may have difficulty finding an appropriate licence. It does have advantages, however, for applicants as it overcomes the problem of having to choose an appropriate licence. On the other hand, a general licence eliminates the difficulty of having to choose the appropriate licence.

Classification of licences in New Zealand and Australian Capital Territory are based mainly on the general nature of business to be conducted on the premises for which a licence is applied. There are few qualifying conditions. There is every possibility that any type of business will be able to find a licence appropriate for its use.

The classification of licences in New Zealand and ACT is worth considering for the future of licensing of premises in Fiji.

Recommendation

- That liquor licences in Fiji be classified as follows: On-Licence, Off-Licence, Club Licence⁶⁴, and Special Licence.

⁶² Section 18, Liquor Act 1982.

⁶³ Cocktail Bar License; Special Event License; Special License

⁶⁴ see Club Licence.

CLUB LICENCE

Unlike other licensed premises, Clubs are at present exempted from the licensing procedures⁶⁵. Findings of the Cruickshank Report, and concerns expressed during the public hearings, particularly in Levuka, about abuse of trading hours by certain clubs give sufficient cause to recommend that clubs be brought under the ambit of the Liquor Act. In other (overseas) jurisdictions clubs are licensed under their respective liquor laws, as are other licensed premises.

Recommendation

- That Clubs registered under the Registration of Club Act Cap. 194 must apply for appropriate licences under the Liquor Act where they intend to sell alcohol on club premises;
- That Clubs be subject to the terms and conditions of the licence they apply for under the Liquor Act;
- That guidance for requirements and conditions for applications for a licence relevant for Clubs be taken from the provisions of the Liquor Act of New Zealand, ACT, NSW and Queensland.

⁶⁵ Section 75(1)(b), Liquor Act of Fiji.

ILLEGAL SALE OF ALCOHOL

The pressure from licence holders and important stakeholders to extend the trading hours of some of the Liquor licences, needs to be seen in the light of one of the major concerns of the industry at present - bootlegging. We were reminded time and again during our consultations, of the seriousness of the problem. That illegal trading had reached new heights was graphically outlined for us during meetings with community representatives and stakeholders in Sigatoka where we learned there was at least one bootlegger providing a home delivery service.

While there are provisions in the Act for Police to arrest licensees who sell outside their trading hours⁶⁶, most offenders have not been brought to justice. And because penalties are minimal in terms of a bootlegger's income, offenders who are caught pay the required fine and carry on with their trade.

Some law enforcers were allegedly reluctant to carry out arrests, or ignored illegal trading in exchange for personal gain.

There were calls to create a new licence to make current bootleggers legal. Others who made submissions were of the opinion there were sufficient liquor outlets in existence. By extending the opening hours of some of these licensed premises, less time would be available to bootleggers, who also put a high mark-up on the alcohol they sell.

Church and other stakeholders believed the increase in bootlegging did not justify the creation of additional licences, and supported stronger enforcement of the law and severe penalties.

The Acting Police Commissioner, in his oral submission, agreed that the extension of opening hours for Off-Licences would help reduce the flow of trade for bootleggers. He called for harsher penalties, including mandatory imprisonment for second offenders, and greater powers for the Police to deal with the problem.

⁶⁶ Section 77, Liquor Act.

Recommendation

The nature of bootlegging is such that it perpetuates an insidious culture of lies, deceit and total disrespect for the law from one generation to the next in families that follow this practice.

It is recommend that:

- Bootleggers be shown no tolerance by the law;
 - No new licence be created to cover their activities. Ample opportunities exist for them to apply for existing licences;
 - Harsher penalties be devised for offenders;
 - The Police be given additional resources, and powers under the Act, to combat illegal trading;
 - More opportunities be made available to the public to purchase alcohol legally.
-

TRADING HOURS

One of the crucial issues of this review was the trading hours of Liquor licences.

Since 1976, when the current legislation was enacted, there has been dramatic growth in the Liquor industry – both in numbers of alcohol providers, and consumers. This can be attributed to population growth, economic and lifestyle changes and trends, as well as Fiji's growing tourism and hospitality industries.

Central Liquor Board figures show there were 809 Liquor licences in operation in the four divisions in 2001 (figures for 2002 are being compiled), compared with 708 in 1999 and 751 in 2000. The highest concentration of licences was in the Western Division (395). The Central Division was next with (291), Northern Division (93) and Eastern Division (30).

The majority of Licences were Off-Licences (369), followed by Restaurant licences (130), Private Hotel licences (109), Publicans licences (47), Clubs (44) and Night Club licences (37).

While these numbers may appear adequate, in terms of geographical/population spread, licence-holders have argued strongly, and with cause, that because the existing restricted selling hours have not been revised for so long -

- licensed operators no longer cope with demand, and have not done so for many years;
- this has led to widespread flouting of the law by many licence holders (in order to meet demand and remain in business);
- the situation has given room for bootlegging to flourish;
- current trading hours are out of step with international trends.

A total of 29 submissions were received on this issue. Twenty-one (72%) recommended that trading hours of licences be increased⁶⁷. Such calls came mainly from government ministries and departments⁶⁸, local governments⁶⁹, manufacturer of alcoholic drinks⁷⁰, distributor/retailer of liquor⁷¹,

⁶⁷ Either the premises to open early or close late.

⁶⁸ Ministry of Commerce, Business Development & Investment; Ministry of Tourism and Culture; Commissioner Central Division.

individuals, and licensees⁷². Most calls were directed towards extending the trading hours for off-licences, nightclub licences, and ordinary restaurant licences. The Fiji Police Force and the Methodist Church of Fiji favoured extension to off-licences only.

Resistance to Change

Resistance to extensions came from the Anglican Church⁷³, Methodist Church of Fiji⁷⁴, Fiji Police Force⁷⁵, and concerned individuals⁷⁶. It was submitted that the extension of the hours would result in over-consumption of alcohol, which will bring about family, financial, health and social problems. The police indicated they did not have the resources, either in personnel or facilities, to supervise the streets and licensed premises for any extension to the trading hours.

New Zealand and Australia

The systems in Australia and New Zealand differ. The liquor laws of New South Wales, ACT, and Queensland place statutory limitations on the hours during which a licence may operate. Under the Sale of Liquor Act 1989 of New Zealand, applicants for licences are required to state the period of time during which they wish to operate their license in a day. There are no statutory limitation for hours of trading. The discretion to limit the hours is vested in the licensing authority, after consideration of other factors relevant to the application.

⁶⁹ Lautoka City Council.

⁷⁰ Carlton Brewery Fiji Limited.

⁷¹ Motibhai and Company Limited.

⁷² Including off license, and nightclub license holders.

⁷³ For all licenses.

⁷⁴ For nightclub licenses. It suggested reduction or trading hours for nightclubs.

⁷⁵ For all licenses, except off-license.

⁷⁶ Mr.Robert Griffin, Alcoholic Anonymous.

OFF-LICENCES

Current off-Licence holders in particular have been losing their business to black market traders because of restrictions to their opening hours. The widely-held view among them and other stakeholders, including the Police, is that extension to Off-Licence trading will go some way to helping curb bootlegging by making alcohol available to the public during the peak hours presently being catered to by illegal traders. In addition, the existing hours (8am to 6pm) have proved inadequate and inconvenient for customers wishing to buy alcohol after work, leaving the way open for people to patronise bootlegging operations close to their places of residence.

There were representations from most licence holders for Sunday sales for a limited number of hours. There were a number of submissions from others, including the Churches, against liquor sales on Sundays.

The Cruickshank Report recommended an extension to Off-Licence trading hours from 8am to 9pm Monday to Saturday for reasons expressed here.

Recommendation

- New trading hours for Off-Licences be from 8am until 9pm daily (instead of the present 8am to 6pm Mondays to Saturdays), including Public Holidays, and excluding Christmas Day and Good Friday.
 - Three hours trading (10am to 1pm) be allowed on Sundays. This recommendation is made primarily in the interests of providing the public with an opportunity to purchase alcohol legally on Sundays, rather than resorting to the services of illegal sellers.
-

NIGHT CLUB LICENCES

A number of Night Club licence holders advocating longer trading hours – 3am appeared to be their preferred closing time - based their arguments on the fact that peak earning time for them began around 10pm, when most night clubbers started arriving. The present 1.00am close of trading meant they were financially disadvantaged.

Also, operating hours were not being properly policed. We were told a small minority of clubs observed the legal trading time, while others continued operating behind closed doors until 3am and even 6am. While the Police seemed eager to monitor those already observing the law, they appeared to disregard flagrant abuse of the trading hours by other operators.

There were a disturbing number of allegations that some Police officers/constables on the beat were accepting payment for ignoring those operating outside the restricted hours.

Well- known, and long-established licencees were of the opinion that if their trading hours were extended, heavy fines and penalties should be devised and imposed on those who did not abide by the terms of the licence. This was also the submission of Lautoka Crime Stoppers which supported 3am closing for night clubs.

There were calls for the adoption of a trading hours system similar to that of New Zealand. In this situation, the Act does not stipulate the opening or closing hours for the sale and supply of liquor. Rather it only requires the applicant for a licence to supply information regarding the days and hours during which he/she proposes to sell liquor. The Liquor Licencing Authority, however, has the discretion to set limits on trading hours.

The case for extended hours, although not necessarily until 3am, was supported by most operators, Government ministries that made submissions and a number of members of the licensing authorities.

Some submissions quoted the situation in other countries where experience had shown that more liberal trading hours had resulted in reduced misbehaviour and liquor abuse. This was also the findings of reviews of the Liquor laws in a number of countries.

Resistance to change

Resistance to extending night club trading hours came notably from the Acting Commissioner of Police, on behalf of the Police Force, the Churches, the representative of Alcoholics Anonymous, and the Lomaiviti Provincial Council/Levuka Town Council representative. Principal reasons given were:

- a lack of manpower and resources for policing;
- present hours were sufficient for providing income for night club operators and entertainment for customers;
- protection of the welfare of customers and the institution of the family;

Having considered the findings and recommendation of the Cruickshank Report, recent submissions for and against the extension of trading hours for Night Clubs, and prevailing conditions, it is clear that some change is necessary if we are to regularise an unwieldy and unacceptable situation, and move forward.

The lack of will on the part of previous governments to address and act upon much-needed reform, together with weak and haphazard enforcement of the law, have given unscrupulous operators an opportunity to flout the law.

Also, it is unfortunate, but true, that development and growth within the industry have coincided with a sharp rise in society of social problems and crime, including those associated with alcohol abuse.

The fact remains, though, that operating outside legal hours has become the norm, rather than the exception.

Recommendation

To help bring order to a situation in disarray, it is recommend that:

- New legislation provide for Night Club trading hours (sale of alcohol) to be extended from the present 5pm to 1am, to 5pm to 2am from Monday to Saturday, including Public Holidays, but excluding Good Friday, Christmas Day and Sunday nights;

- There be a drink-up time of half an hour. Operators must ensure patrons have left the premises by 2.30am. Some flexibility may be required here on the part of law enforcers. But it must be obvious to them that at 2.30am operators are clearing their premises of patrons. Licence holders will face fines, including suspension of their licence, for regular infringement of the trading hours;
- All unconsumed drinks be left on the premises;
- With the recommended separation of Night Club and Restaurant Licences, night clubs will no longer open during the day (12.00pm – 2.30pm), or on Sundays as a number are now doing;
- For major national celebrations or events (except religious events such as Christmas, Easter, Diwali, Eid or the Prophet's Birthday) operators be eligible to apply to the Divisonal/District Licensing Authority for an extension to operating hours.

Further to this recommendation, it has to be remembered that a Night Club licence is a legitimate business licence entitling holders to operate a business that provides a safe and enjoyable drinking and entertainment environment for its customers. It also permits them to earn income, provide employment and make a profit, within the confines of the law.

RESTAURANT LICENCE

Present restrictions on the sale of alcohol in restaurants after 2.30pm, with a resumption at 6pm until 11pm have no relevance in today's business climate. This was recognised by the Cruickshank review committee and a number of stakeholders in the latest consultations.

Recommendation

- That the 2.30pm to 6pm closing be abolished and trading hours for Restaurant Licence remain from from 11am to 11pm, everyday.
 - That the existing stipulation that consumption of alcohol be accompanied by a meal should remain, and be properly enforced. This is to ensure operators do not use their premises as mere drinking places.
-

PUBLICANS LICENCE

While most of those who made submissions were of the view that existing opening hours, 11am to 9pm from Monday to Saturday be retained, none made reference to the interrupted Saturday trading hours of 11am to 2pm and 4pm to 9pm. Consideration was given to this by the Cruickshank review committee which concluded that the 2pm - 4pm break served no purpose and, in fact, encouraged drinkers to resort to fast drinking or sculling, or to making heavy purchases before 2pm. The committee recommended that this restriction be abolished. This review also supports the recommendation.

Recommendation

- That in the interests of establishing a reasonable system of control over the sale and supply of alcohol to the public, and contributing to a reduction in alcohol abuse, the present Saturday 2pm to 4pm closing be abolished;
 - That opening hours be from 11am to 9pm from Monday to Saturday, including Public Holidays, but excluding Sunday, Christmas Day and Good Friday.
-

PRIVATE HOTEL LICENCE

Under a Private Hotel Licence the licensee can sell liquor to resident guests, and their bona fide guests only, from the hotel bar between the hours of Noon and 2.30pm and 6pm to 11pm. These hours are no longer appropriate in view of the growing number of smaller hotels/resorts, including eco-tourism operations, catering for tourists and increasing numbers of local holiday-makers, with high expectations for quality standards and service comparable with overseas holiday destinations.

Recommendation

- That opening hours be uninterrupted from 8am to 11pm on any day of the year, including Sundays and Public Holidays.
 - That licence holders be permitted to sell liquor on a 24-hour basis to their resident guests only.
-

SPECIAL HOURS LICENCE

This licence allows for hotels with a Publican's Licence to sell alcohol from 9pm to 1am. To cater for the visitor trade, more flexibility is required in the opening of the hotel's bar. While the present time limit should be retained, discretionary authority should be given to the Divisional Licensing Authority to extend the 1am closing, in the interests of furthering the tourism/convention trade.

A recommendation by the Central Liquor Board in 2000 stated that criteria for this special licence should include the requirement that the licence holders have 100 or more rooms, and that the function or event concerned has direct implications for furthering tourism, conventions and like businesses. However, as such functions are increasingly staged or convened in smaller, boutique resorts and hotel operations as well, we recommend that the room requirement be upward of 50.

Recommendation

- That the Special Hours operating time of 9pm to 1am be retained.
 - That the Divisional Licensing Authority also be given discretionary authority to grant Special Hours licences to hotels with a Publican's licence and upward of 50 rooms to remain open after 1am for major functions directly related to promotion of the tourism, conventions and similar businesses.
-

TAVERN LICENCE

Tavern Licences were introduced in 1975 and the limited quota of 10 appears to have been earmarked for issue to rural areas. Rural area taverns, according to the Cruickshank Report, have not been successful, possibly because they were established in areas not readily accessible and sparsely populated. Rural taverns seemed likely to continue being a doubtful proposition, given the generally conservative attitude of the rural population. The Cruickshank review committee felt that issuing Tavern Licences within town areas, would provide a working solution to the shortage of mixed licensed drinking premises within urban and peri-urban areas, Taverns with properly supervised beer gardens might help draw in public group drinkers and hopefully assist in modifying the growing public nuisance pattern of their drinking in unlicensed and vacant areas. The committee recommended that Tavern Licences be available for issue to both urban and rural areas with strict observances of the provisions of the Liquor and Town Planning Acts, and Health and Building regulations. It also recommended that opening hours be extended from the present 11am to 9pm period to 11am to 11pm daily, including Public Holidays, but excluding Sundays, Good Friday and Christmas Day.

Recommendation

The Cruickshank Report rationale for change was considered and additional opinion sought from at least one of the present licensing authorities. This review is of the opinion that the current opening hours, 11am to 9pm, are adequate.

- That the current 11am to 9pm trading hours remain.
-

LICENCE FEES

There was little dissent to the proposal that licence fees be increased. A total of 18 submissions were made on the issue. 14 (77%) submissions were in favor of increasing the fees, both application fees and licence fees. These included government ministries and departments⁷⁷, and even licensees. One submission, however, stated that the fees are too expensive, while three submissions gave factors to be considered in determining the appropriate fees to be levied.

The overall proposition by those suggesting increase in fees is that they must be increased by least 100% from the current fees. Some have suggested a 200%⁷⁸, and even 500%⁷⁹ increase.

There was a submission also that the appropriate fees should be calculated on the turnover of the business for the preceding year⁸⁰. This is currently the case under the Act.

The Cruickshank Report proposed a detailed schedule of fee increases and also recommended that the requirement for audited accounts be removed. The Central Liquor Board in 1995 also recommended that the fees for applications for, and renewal of licences be increased from the present \$11 to \$50. In 2000, the Board supported the recommendations of the Cruickshank Report for fee increases on all licences.

Australia and New Zealand

The fees applicable in these countries are much higher than those under Fiji's Liquor Act. The New Zealand fees ranges from \$63 for a Special Hours Licence to \$776 (on-licence, off-licence, club licence)⁸¹. Applicable fees in Queensland ranges from \$125 (limited licence) to \$1182 for other licences⁸².

⁷⁷ Ministry of Tourism; Ministry of Finance and National Planning; Commissioner Central; Commissioner Eastern; Fiji Police Force; Western Divisional Tribunal.

⁷⁸ Ministry of Finance and National Planning.

⁷⁹ Fiji Police Force.

⁸⁰ Lagoon Resort; Don Duncan.

⁸¹ Regulation 29, Sale of Liquor Regulation 1990.

⁸² Regulation 27, Liquor Regulation 2002.

Recommendation

- That calls for increases by those directly involved in the administration of the Act and government finance be heeded;
 - That licence fees be increased substantially;
 - The increase will go a long way towards helping to ensure only persons genuinely interested in the business of selling and supplying liquor will care to apply. Such increases will also, hopefully, help deter persons whose aim is to make money at all costs without a commitment to careful management, and the terms and conditions of the licence.
 - That increases reflect, to a greater degree, those outlined in the Cruickshank Report, but that Application and Renewal fees be increased from the present \$11 to \$50.
-

DISCIPLINARY ACTIONS AGAINST LICENSEES

There are no provisions for suspension of licences under the Act. There are provisions though for cancellation on any grounds warranting cancellation⁸³, or for good cause⁸⁴.

Numerous grounds have been suggested for suspension and cancellation. It has been recommended that the power to suspend or cancel be exercised sparingly, and only in extreme circumstances, and that licensees be given the opportunity to rectify their mistake. Failing this, their licences should be either suspended or cancelled. On the other hand, there are those who think that power to suspend and cancel must be used as early as possible to deter further violation of the licences.

Australia and New Zealand

The Liquor Act 1975 of Australian Capital Territory provides a simple and comprehensive model on the grounds and circumstances under which disciplinary actions may be taken against a licensee. There are 5 available disciplinary actions against a licensee: Reprimand⁸⁵, Directions⁸⁶, Suspension⁸⁷, and Cancellation⁸⁸.

A licensee is liable to be issued with a Reprimand or Direction where he/she contravenes a provision of the Act or permitted the use of the premises in a manner causing nuisance, disturbances, or inconvenience to others. A Direction may mean a payment of fine or a direction to do or refrain from doing an act. A Direction may not be issued if the licensee took reasonable steps to avoid the contravention.

A licence is liable to be suspended where the licensee contravenes a provision of the Act, or of a Direction, and the public interest demand the suspension. Cancellation may happen where the licensee is not a fit and proper person to hold the licence, or where the premises is not fit and proper for the purpose of the licence.

⁸³ Sections 22.

⁸⁴ Section 63.

⁸⁵ Sections 79-81.

⁸⁶ Sections 82-85.

⁸⁷ Sections 86-90.

⁸⁸ Sections 91-93.

This is a fair system of disciplinary procedures. The four levels of disciplinary actions allows for proportionate punishment against the offending licensees.

Recommendation

- That disciplinary procedures and actions available under the Liquor Act 975 of Australian Capital Territory be studied further with the view to adopting the same for Fiji.
-

PUBLIC HEALTH ACT

Strong suggestions have come from health officials of town and city councils that the Public Health Act and the Liquor Act must complement each other⁸⁹. In other words, a determination must be made on the liquor licences where a breach of the Public Health Act is committed. The Councils currently face the problem where a premises is declared unfit under the Public Health Act, yet no determination can be made on the licence as no contravention of the Liquor Act has been committed, even though the licence is granted in relation to that premises.

It is submitted that where a premises is declared unfit or unsafe under the Public Health Act, and a closing order is made therein⁹⁰, the same order must render the premises unfit and unsafe for the purpose of the Liquor Act. The liquor licence must become inoperable.

The position in other jurisdictions, especially New Zealand, is clear on this, and is in line with submissions the Commission received. Under the Sale of Liquor Act 1989⁹¹, a Medical Officer of Health or member of the fire service may apply for the suspension of a licence where a licensee has failed to comply with requirements relating to public health or fire safety procedures, and such failure is likely to injure or endanger the health or safety of people.

Failure by a licensee to comply with the provision of the Public Health Act is a failure to comply with requirements relating to public health. The closing order under section 21 of the Public Health Act may not apply to the licence automatically. Instead an application should be made by the health inspector of the local authority for a suspension of the licence, based on the closing order.

⁸⁹ Mr. Rajendra Pratap, Director Health Service, Lautoka City Council; Mr. Samuela Lagilagi, Sigatoka Town Council.

⁹⁰ Section 21, Public Health Act Cap. 111.

⁹¹ Section 134.

Recommendation

- That a health inspector with the local government authority may apply to the licensing authority for the suspension of a licence where there are reasonable grounds for believing that the licensee has failed to comply with requirements relating to public health, and the health of persons using the premises is likely to be injured, or their safety likely to be endangered;
 - That a closing order issued under section 21 of the Public Health Act Cap.111 shall constitute a failure to comply with requirements relating to public health.
-

QUOTA SYSTEM

Under the Act the Central Liquor Board is allocated quotas for Off-Licences, Tavern, Restaurant and Night Club licences. Quotas are extended following requests and justification by the Board to the Attorney General & Minister for Justice. However, it has been the opinion of successive Boards that quota restrictions should be lifted and market forces be allowed to determine the number of licences.

From the latest submissions and consultations, there is consensus that quota restrictions be lifted. Also, the Fair Trading Decree prohibits restrictive trade practices and encourages competition in the market.

Recommendation

- That all Quotas which currently apply on various licences be discontinued.
-

GEOGRAPHICAL DISTRIBUTION OF LICENCES

In existing legislation, the location of premises is not a consideration for granting of a licence. In recent years, though, with the proliferation of licences, increasing concern has been expressed by the Police and members of the public about the inconvenience and/or danger and disturbance to neighbourhood and village peace, security and property as a result of premises located close to residential/village/schools being issued with Liquor licences.

Most stakeholders were of the view that the location of a premises should be a factor in determining whether a licence be granted. But rather than the Act defining boundaries, the National Licensing Authority, in consultation with the Divisional Licensing Agency, should be empowered to determine the location of licensed premises. Direction should also be taken from Provision 9, Sch. A of the Town & Country Planning Act which states the category of development permitted in various zones. It was also felt that licences should not be issued to premises in residential areas.

Recommendation

- That the location of a premises be a determining factor in the issuance of a Liquor licence, and that the National Licensing Authority (FLLA) be empowered to make final decisions in this respect, following consultation with all relevant parties, including the enforcement authority, and having taken into account the views of the community involved.
-

THE GENDER ISSUE

The presence of sections 86 and 87 in the Liquor Act have raised constitutional questions. Such provisions may now be inconsistent with the Constitutional freedom from discrimination on the grounds of sex, and age⁹².

Section 86 is discriminatory against women on the ground of sex. Section 87 is discriminatory against women on the grounds of sex and age.

Recommendation

- That sections 86 and 87 of the Liquor Act be repealed.

⁹² Section 38.

SALE OF LIQUOR TO PERSONS UNDER 18

The sale of alcohol to persons under the age of 18 is prohibited under section 60 of the Juvenile Act (Cap 56). No such provision exists in the Liquor Act.

There was general agreement that the Act be amended to include relevant provisions in the Juvenile Act. This was a recommendation also of the Cruickshank Report⁹³.

The views and opinions of stakeholders were sought on the issue of identification of consumers under 18 years of age and how this could pose problems with enforcement of the law. The issue of ID documentation was discussed, as well as penalties for customers and licensees who break the law.

The views of the Cruickshank Report on this matter were also taken into consideration.

Sale of Liquor to Minors

The responsibility for ensuring that minors are protected from the abuse of alcohol rests principally on licensees, and partly on minors, and other members of society. To give emphasis to this, it is recommended that measures be created which severely penalise the licensee, and others, for selling or serving alcohol to persons 18 years and younger, as well as using minors to purchase alcohol.

Australia and New Zealand

The coverage of sale of liquor to minors in the respective liquor laws of these two countries is extensive and detailed. Insight can be obtained from the liquor laws of Australia and New Zealand for fine tuning the provisions of the Juvenile Act on this issue.

Laws relating to sale of liquor to minors are aimed at shielding minors from early abuse of alcohol consumption. To achieve this, the Juvenile Act should contain provisions prohibiting the sale of liquor to minors, prohibition of minors from licensed premises, prohibition of minors from purchasing liquor, and prohibiting any person from sending a minor to purchase liquor on his or her behalf⁹⁴.

⁹³ Recommendation 19.

⁹⁴ Section 60.

The above prohibitions do not guarantee total protection of minors. Blanket prohibition of minors from entering and remaining in licensed premises is discriminatory against minors wishing to enter and remain in the premises without drinking. Such licensed premises may be a restaurant, or nightclubs to which minors would be entitled to enter, if it was not for the liquor licence. Provisions must be made wherein minors are allowed to enter, remain and enjoy facilities available in licensed premises without consuming alcohol. By the same token, care must be taken to ensure they do not consume liquor.

The following provisions in legislations from Australia and New Zealand are sufficient to ensure complete protection of minors from any likelihood of consuming liquor.

Possession or consumption of liquor on licensed premises⁹⁵

A licensee commits an offence if a minor possesses or consumes alcohol on the licensed premises.

Purchasing liquor for minors⁹⁶

Every/any person commits an offence if he/she purchases or acquires any liquor from licensed premises with the intention of supplying the same to a minor, unless that person is a parent or guardian of the minor.

Employment of minors in licensed premises⁹⁷

A licensee commits an offence if he/she employs a minor at the licensed premises while the premises is open for sale of liquor.

⁹⁵ Section 153, Liquor Act 1975, ACT.

⁹⁶ Section 160, New Zealand Sale of Liquor Act 1989.

⁹⁷ Section 161, New Zealand Sale of Liquor Act 1989.

Presence of minor in licensed premises⁹⁸

A minor commits an offence if he/she enters and remains in a licensed premises without the care or company of an adult.

Identification of Age of Minors

Central to the issue of proving age of minors is appropriate age identification. This is not addressed by the Liquor Act and Juvenile Act. This presents problems and confusion both to minors and licensees in determining credible documents of age identification. Such a system is needed.

Australia and New Zealand

Documents of age identification are well defined in the liquor laws of both Australia and New Zealand⁹⁹. The types of documents constituting 'document of age identification' and its contents are similar in both jurisdictions. They can be summarised as follows:

- a. New Zealand passport;
- b. an overseas passport;
- c. a driver's licence issued under the relevant legislations;
- d. other documents in prescribed form and issued by prescribed by persons, organisations, body corporate, government department, crown agency or statutory board.

Further, the document must feature a photograph of the person to whom it refers, and contain information from which his/her age can be determined.

A similar classification exists under the liquor laws of ACT, NSW and Queensland.

The use of specific documents for identification raises the possibility of forgery of documents, or the unauthorized use of other people's documents to either obtains entry into a licensed premises or purchase liquor from licensed premises. The provision of section 158 of the Liquor Act 1975 of ACT would sufficiently cover such occurrences. The section prohibits a person from using someone else's

⁹⁸ Section 156, Liquor Act 1975, ACT; Section 116A, 116B Liquor Act 182, NSW.

identification, or using a form of identification that is forged or fraudulently altered either to obtain entry or remain in a licensed premises, or to buy liquor, or to obtain a proof-of-age card.

Recommendation

- That a new Part be inserted in the Liquor Act and titled Minors;
- That the provisions of section 59 and 60 of the Juvenile Act Cap. 56 be removed and inserted under Minors;
- That the following offences be inserted in the Liquor Act, under Minors:
 - a. A licensee commits an offence if a minor possesses or consumes alcohol on the licensed premises;
 - b. Every and any person commits an offence if he/she purchases or acquires any liquor from licensed premises with the intention of supplying the same to a minor, unless that person is a parent or guardian of the minor.
 - c. A licensee commits an offence if he/she employs a minor at the licensed premises while the premises is open for sale of liquor.
 - d. A minor commits an offence if he/she enters and remains in a licensed premises without the care or company of an adult

Penalties

That penalties relating to offences committed under this section of the Act reflect the severity with which these offences are viewed by the Government and the community.

However, it will not be an offence to supply liquor on a licensed premises to a juvenile/minor if he or she is accompanied by a parent or guardian, and the liquor is supplied to the person by the parent or guardian. Neither will it be an offence if a person purchasing liquor to supply a minor is the parent of the person concerned, or the minor receives the liquor while attending a private social gathering.

⁹⁹ Section 2A, Sale of Liquor Act 1989 (New Zealand); Regulation 37 (NSW Liquor Regulations 1996); Section 151, Liquor Act 1975 (ACT); Section 6, Liquor Act 1992 (Queensland).

PENALTIES

A total of 14 submissions were received on this issue. All submissions were in favor of strengthening the penalties clauses in the Act. The common submissions have been the need to ensure that penalties and fines under the Act are deterrent and penalising in nature. Suggested penalties have ranged from an increase of current penalties by 100%-200%¹⁰⁰, to mandatory penalties¹⁰¹, imprisonment and suspension and cancellation of licenses.

Crime Stoppers Western made interesting suggestions that the Act must set mandatory minimum penalties for certain offences under the Act. Further, that the Courts must disregard sections 29, 41, 42, and 44 of the Penal Code in assessing appropriate penalties. This would certainly be deterrent in nature.

But such amendments would infringe on the constitutional rights of an accused to freedom from disproportionate punishment under the law, as guaranteed under section 25(1) of the Constitution of Fiji 1997. Such mandatory penalties have been declared unconstitutional in a recent Court decision¹⁰². The Court must be allowed to impose a punishment that is fair, in consideration of the nature of the offence and the circumstances surrounding the offence¹⁰³. Section 29, 41, 42, and 44 are aimed at achieving the proper discharge of that function by the Courts.

Penalties currently contained in the Act are not sufficiently penalising and deterrent in nature. A maximum fine of \$200 for a person convicted of illegal sale of liquor¹⁰⁴, from which he may profit so much, does not present a fair picture of the proportionality of the offence to the benefit from the offence. Seeing that setting minimum mandatory penalties would be unconstitutional, perhaps higher maximum penalties must be set. The Cruickshank Report recommended that the maximum fines and penalties currently contained in the Act be increased by 100%¹⁰⁵.

In attempting to make the fines and penalties penalising and deterrent in nature, maximum fines currently contained in the Act be increased by 200%, or more.

¹⁰⁰ Ministry of Finance.

¹⁰¹ Crime Stoppers Western.

¹⁰² **State vs. Audie Pickering** HAM 007 of 2001/S

¹⁰³ **State vs, Audie Pickering.**

¹⁰⁴ Section 77, Liquor Act (Fiji).

Recommendation

- That all monetary and imprisonment maximum penalties contained under the Act be increased by 200%, and more, where this is considered appropriate;
 - That appropriate provisions of the Act stating penalties and fines be amended accordingly.
-

¹⁰⁵ Recommendation 21; Appendix 3.

RAISING STANDARDS

To promote standards and responsible management within the industry, it is suggested¹⁰⁶ that the system of management certification similar to that in New Zealand's Liquor industry, be adopted in Fiji.

All managers of licensed premises are issued with a manager's or general manager's certificate by the licensing authorities. No person is appointed a manager of any licensed premises unless he or she is the holder of a management certificate. A manager must be on duty at all times when liquor is being sold or supplied to the public on any licensed premises. A certificate is issued in consideration of the applicant's character and reputation, any convictions recorded against him/her, experience in managing premises where a licence was in force, relevant training and qualifications, and the extent of involvement in the management and activities of the club or premises.

It is suggested also¹⁰⁷ that the Fiji Liquor Licensing Authority work with institutions such as the Fiji National Training Council, and other tertiary institutions, to design and provide certificate courses for licence-holders, managers, and staff (including security). Training would primarily be in their responsibilities under the Liquor Act, but may also include customer relations and service, and First Aid, in the case of security personnel.

Consideration must also be given to special training for the Police in all aspects of the Liquor Act and its enforcement.

Licensees must also demonstrate some knowledge of their obligations under the Act at the time of application.

¹⁰⁶ Liam Hindle

¹⁰⁷ Peter Johnson.

Recommendations

- That no person shall become the manager of a licensed premises under the Act unless he or she is certified to do so by a recognised institution;
 - That no person shall be granted licences under the Act unless he/she can demonstrate sound knowledge of his obligations under the licence and the Act;
 - That no person shall be employed as a security officer at a licensed premises unless he can demonstrate sound knowledge of basic First Aid procedures and general good conduct.
-

DISPLAY OF SIGNS, NOTICES AND LICENCES

For the benefit of the general public, information regarding the terms and conditions of licences and of the Act should be made available in the form of notices and signs displayed at licensed premises. Such practices are provided for in the liquor laws of other jurisdictions¹⁰⁸. Every licensee in New Zealand has a mandatory obligation to “display at all times a sign attached to the exterior of the premises, so as to be easily read by persons immediately outside each principal entrance, stating the ordinary hours of business during which the premises will be open for the sale of liquor.”¹⁰⁹ A copy of the licence and conditions must be displayed at all times and be attached to the interior of the premises.

In New South Wales, displays of notices are required in relation to minors. These notices are contained in the New South Wales Liquor Regulations 1996. They are required to be displayed at licensed premises. The notices reflect the various prohibitions laid out in the Act.

Recommendation

- That all licensees be statutorily required to display at all times at the principal entrance to the premises a sign stating the opening and closing hours for the sale of liquor;
- That the licensee must display at all times on the inside of the premises, and at a place where it can be easily located and read by those attending the premises, the licence and its conditions;
- That there must be displayed at all times at the principal entrance of all licensed premises, a notice prohibiting persons under the age of 18 from entering the premises;
- Further, that the notice must state it is an offence for a minor to enter and remain in the premises, unless a parent or guardian accompanies him or her;
- That there must be displayed at all times inside every licensed premises a notice making it an offence to sell or supply to, or obtain liquor on behalf of, a person under the age of 18 years.

¹⁰⁸ New Zealand and New South Wales.

¹⁰⁹ Section 25, Sale of Liquor Act 1989.

ENFORCEMENT

Crime Stoppers Western submitted strong recommendations for improving the enforcement capabilities of the police under the Act. This included extending powers currently enjoyed by the Police under the Act to members of the Special Constabulary Unit¹¹⁰.

This recommendation is supported by the fact that there are more special constables on the streets than regular members of the force. Extending powers to special constables would allow for better control of licences, and enforcement.

There is a fear of giving powers to every member of the police force. Some powers must be exercised only by some senior members of the force. Under the Act these include the power to close premises in times of riot or tumult by officers of or above the rank of sub-inspector¹¹¹, and the power to enter, search, and remove liquor found in unlicensed shops by officers of or above the rank of sergeant¹¹². Powers available to every member of the police force include boarding and searching of vessels or vehicles¹¹³, power to enter licensed premises for prevention and detection of crime¹¹⁴, and power to seize liquor found in or exposed in public places¹¹⁵.

The main source of concern is the preservation of peace and prevention and detection of crimes on or surrounding licensed premises. Every police officer can exercise these powers. However, the issue raised time and again in relation to enforcement was not so much the lack of power of the Police, but rather the lack of enforcement, or lack of sufficient knowledge of the liquor laws to allow for better enforcement.

Recommendation

- That every possible assistance be given to the Police Force to enable its men and women to carry out their responsibilities with pride, confidence and integrity. We believe this will, and can happen through strong and professional leadership in the Force, and improved attitudes and work ethic resulting from good training and conditions of work that reflect the important

¹¹⁰ Under section 936, and 97 (Liquor Act).

¹¹¹ Section 96.

¹¹² Section 97.

¹¹³ Section 92(3).

¹¹⁴ Section 93(1).

¹¹⁵ Section 94(1).

and often difficult and dangerous role of Police officers as protectors of society and enforcers of the law.

SOCIAL AWARENESS PROGRAMMES

There was total support for Alcohol Awareness Programmes to help educate and inform the public, youth in particular, about the dangers inherent in the consumption and abuse of alcohol.

As mentioned earlier, one of the functions of the National Licensing Authority would be to work with the appropriate Government ministries and organisations, Youth, Church, community groups and NGOs in promoting awareness programmes, and in exploring the possibility of establishing counselling and rehabilitation centres and programmes in urban and rural areas.

There were suggestions that funding for this work be sought from:

- a percentage of annual Liquor licence fees, and fines meted out by the Courts for liquor-related offences;
- an annual fee levied on manufacturers of alcoholic beverages;
- Aid donors through the Ministry of Health
- The Ministry of Education
- The Government, through the National Substance Abuse Advisory Council;
- International Aid Agencies.

Recommendation

- That the national licensing authority vigorously pursues all measures and opportunities available to promote country-wide awareness of the responsible use of alcohol and the effects of alcohol abuse;
- That primary funding for these social awareness programmes be derived from:
 - (i) An annual fee levied on manufacturers of alcoholic drinks, and on sales of imported brands of alcoholic drinks, OR

- (ii) A proportion of revenue the Government raises from existing taxes on alcoholic drinks;
 - That the funding involved be sufficient to mount comprehensive annual national educational programmes.
-

CONCLUSION

I have endeavoured to make this review of the Liquor laws as comprehensive as possible. It was a demanding assignment, but I believe the Commission has addressed the major issues as outlined in its Terms of Reference. It has received comments and views from the industry and community, and listened to public opinions.

The Commission's observations and recommendations should provide a basis for new legislation appropriate for our country at this stage of this development.

Emelita Wendt Wilson
Part-Time Commissioner,
Fiji Law Reform Commission

May 9th, 2003

List of written submissions

1. Ministry of Commerce/Business Development & Investment
2. Ministry of Tourism, Culture, Heritage & Civil Aviation
3. Ministry of Finance & National Planning
4. Commissioner Central Division
5. Commissioner Eastern Division
6. Fiji Police Force
7. Crime Stoppers Western
8. Suva City Council
9. Anglican Church
10. Methodist Church of Fiji
11. Arya Pratinidhi Sabha of Fiji
12. International Baptist Church, Lautoka
13. Rabi Provincial Council
14. Carlton Brewery
15. Motibhai and Company Ltd
16. Savusavu Tourism Association
17. Fiji Hotel Association
18. Lagoon Resort
19. Coco's Nightclub
20. Mr Leo Smith
21. Hon. Ofa Swann
22. Mr G.P. Shankar
23. Mr Don Duncan
24. Mr Robert Griffin
25. Mr Paul Sloan
26. Mr William Cruickshank
27. Dr Arun Sharma
28. Ms Sharon & Mr Peter Foster
29. Ms Emele Naisele
30. Mr Brij Lal
31. Mr Michael Preston
32. University of the South Pacific – Student Counsellor

List of Oral Submissions:

Levuka

1. Mosese Vunivutu, Levuka Town Council
2. Rupendra Kumar, Gulabdas Supermarket Limited
3. George Gibson, Levuka Tourism Committee
4. Meraia Uluiviti, Ovalau Club
5. Moana Ashley, National Trust of Fiji
6. Kishore Kumar, Ovalau Club
7. Councillor Bulivou
8. Joeli Bogitolu, Delana Methodist School.

Lautoka

9. Elisapeci Lutu
10. Prabakar Chauhan
11. Rajendra Paratap, Lautoka City Council
12. Jone Nakautoga, Western Divisional Liquor Tribunal; Ba Provincial Council
13. Ms Fung, Western Liquor Divisional Tribunal
14. Crime Stoppers Western
15. International Baptist Church (Pastor Paul D. Daku)

Nadi

16. Neli Turagabeci

Sigatoka

17. Mustafa Khattab, Casablanca Hotel
18. John Pieregorva, Le Café
19. Samuela Lagilagi, Sigatoka Town Council
20. Mahendra Patel, Riverview Hotel
21. Representatives of Crime Stoppers Sigatoka

Suva

22. Suva City Council
23. University of the South Pacific, Ms Mary Montu
24. Fiji Police Force
25. Liam Hindle, Matrix Limited
26. Peter Johnson, Matrix Limited
27. Jon Apted, Munro Leys
28. Robert Griffin, Alcoholic Anonymous
29. Dr. Arun Sharma.