

# **Controlled purchase operations**

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## Policy statement and principles

### What

Controlled Purchase Operations (CPO) are planned operations designed to monitor and enforce the provisions relating to the Sale and Supply of Alcohol Act 2012 and particularly to test the compliance level of licensees relating to the sale of alcohol to people under the purchase age.

The CPO provides Police with the opportunity to send minors in to licenced premises to test if they are served alcohol. Failures by the licensed premises can result in sanctions before the Alcohol Regulatory and Licensing Authority or District Court.

### Why

CPOs are a test of the compliance level of licensed premises, specifically in relation to the sale of alcohol to people under the age of 18 years.

### How

Police will:

- ensure where possible that the compliance of licensed premises is tested to ensure compliance with the Act
- target licensed premises based on risk and intelligence information
- follow the CPO guidelines to ensure consistency of practice and the prospect of prosecution.

## Summary

### Controlled purchase operations (CPO)

CPO are planned operations designed to monitor and enforce the provisions relating to the Sale and Supply of Alcohol Act 2012 and particularly to test the compliance level of Licencees relating to the sale of alcohol to people under the purchase age. They involve supervised volunteers aged under 18 years attempting to buy alcohol from licensed premises. Should a volunteer's purchase prove successful, the premises' operator, manager or licensee is liable to prosecution or other sanction via the Alcohol Regulatory and Licensing Authority (ARLA) or the District Court. A CPO can also be used as an educative tool for licensees, their staff and for the wider community.

CPO's have been an effective compliance tool over the last ten years, and it is noted that the incidence of premises selling to minors during this time has declined. This is due to not only the collaborative efforts of the regulatory agencies in running these operations, but to the licensees themselves.

They are not designed to trick licensees and/or operators into non-compliance. They are used to test their compliance with the law.

### Scope and application

This chapter is a tool for people who are familiar with the Sale and Supply of Alcohol Act 2012 and whose roles include responsibility for the objects of the Act and monitoring and enforcing the Act.

CPO methodology and accepted practice are constantly evolving and it is not possible to cover every facet of CPO practice and prosecution.

This chapter aims to help ensure operations are robust, defensible, supported by best practices and are nationally consistent. For those agencies that have not run any CPO and have been considering them, it provides valuable detail on how to introduce them and work with other agencies to achieve success.

As with similar legislation, compliance with the legal provisions relies on adequate surveillance and enforcement.

### Case law

All case law referred to in this chapter at the time of publishing was made in reference to the Sale of Liquor Act 1989. Whilst the principles contained within the case law remain relevant, it is to be noted that future decisions made by the Alcohol Regulatory and Licensing Authority (the Authority) may well change or supersede existing case law.

## CPO participants

### Agencies working in partnership

Section [295](#) (duty to collaborate) of the SASAA establishes a duty for the Police, Medical Officers of Health and Licensing Inspectors to both establish and maintain arrangements to monitor licences and enforce SASAA, and to work together to develop and implement strategies for the reduction of alcohol related harm.

Recent [CPO](#) have been highly successful partnerships that combine the strengths and expertise of Police, District Licensing Inspectors, and health agency staff. They have also hinged on using well-trained and credible volunteers who are under the age of 18.

This section outlines the key roles of the principal participants involved in successful [CPOs](#). Other agencies can also be involved, such as Youth Access to Alcohol (YATA) clusters or Safer Community Councils. One of the keys to success is achieving a sensible balance between consultation and confidentiality, particularly among smaller or close-knit communities. Ultimately, 'who does what' will be determined by common sense and negotiation.

### Police

Police have consistently supported [CPO](#) as a key strategy to increase public safety and reduce alcohol-related harm. We have an important role in CPO inception, development and success, with specific powers and expertise in matters of law, collecting and handling evidence, and prosecution.

Usually, the officer holding the Alcohol Harm Prevention portfolio participates in jointly run CPO. However, other officers working in youth aid or community policing have sometimes led CPO or worked collaboratively with specialist licensing staff.

Only minors purchasing alcohol or being present on licensed premises under the instructions of Police acting in the course of their duties are exempt from prosecution under sections [243](#) - Buying of alcohol by people under purchase age and [244](#) - Minors in restricted areas or supervised areas, SASAA. Thus, Police are an essential partner in jointly run CPO.

Other roles for Police may include:

- compiling a list of premises to be visited and the criteria for selection (such as previous complaints that have caused concern over sales to minors)
- assisting as expert witnesses to verify or corroborate volunteer evidence
- placing CPO within the context of broader Police work aimed at reducing alcohol-related harm
- disseminating media releases
- leading or participating in all follow-up actions following CPO
- initiating prosecutions in the Authority and District Court.

### District Licensing Inspectors

District Licensing Inspectors (DLI) are considered the lead agency in local licensing matters - and Inspectors are usually key people in inter-agency [CPO](#).

Only DLI or Police constables can initiate prosecutions before the Authority or the District Court. Collaboration or consultation with Police is always recommended for District Court prosecutions.

Licensing Inspectors can contribute to [CPO](#) in a number of ways, such as in:

- publishing the likelihood of [CPO](#) as one method of monitoring
- noting the number of occasions that newsletters and/or letters from the District Licensing Committee have provided notice to all premises so that action can follow any [CPO](#).
- compiling a list of premises to be visited and the criteria for selection (such as previous complaints that have caused concern over sales to minors)
- funding aspects of the operation (e.g. capital for purchases, volunteer costs, etc.)
- helping as 'in-store' witnesses to verify or corroborate volunteer evidence

- initiating prosecutions before the Authority for managers and licensees
- all follow-up actions with licensed premises in the area.

## The Health Agency

Many CPO have included health agency staff as significant partners, usually in one of two roles:

- On behalf of the Medical Officer of Health, in CPO to licensed premises.
- Within the broader brief of reducing alcohol-related harm, in CPO to licensed premises.

Health promoters and Health Protection Officers can contribute to CPO in a number of ways, such as in:

- recruiting volunteers, helping with briefings, obtaining parental/caregiver consent and other related tasks;
- compiling a list of premises to be visited and the criteria for selection (such as previous complaints that have caused concern over sales to minors)
- funding aspects of the operation (e.g. capital for purchases, volunteer costs, etc.);
- helping as 'in-store' witnesses to verify or corroborate volunteer evidence;
- placing CPO within the context of broader strategies aimed at reducing alcohol-related harm among young people;
- planning, writing and disseminating media releases;

## Volunteers

### Volunteers telling the truth about their age

A High Court appeal in 2005 reinforced that CPO are a fair test of licensee's responsibilities under the Sale of Liquor Act 1989. This appeal was lodged after the Liquor Licensing Authority refused to suspend the licence of a bottle store following a CPO over concerns that the minor involved lied about her age.

The Liquor Licensing Authority held that while an offence (the sale of liquor to a minor) had been committed, it would be counter-productive to the object of the Sale of Liquor Act 1989 to suspend the licence based on a minor lying. Following the appeal, the High Court subsequently released a decision that stated the minor misrepresenting her age was an irrelevant consideration for the purposes of the Authority exercising its discretion, allowed the appeal and referred the matter back to the Liquor Licensing Authority for rehearing (see Scenic Cellars Partnership Ltd LLA PH 210-211/2005).

This ruling by the High Court reinforces that CPO are a fair test for licensees and not some kind of entrapment. Furthermore, it also reinforces that it is acceptable for volunteer minors when questioned about their age to falsely state that they are 18 years old.

### Present CPO good practice

Whilst it is preferable to present the licensee with the most "real" scenario, i.e. the volunteers lie about their age if asked, it remains the discretion of the individual agencies if they instruct their volunteers to lie or tell the truth about their age if asked. One potential method is to have the volunteer supply their date of birth and leave the licensee (or seller) to work it out, but have the volunteer be truthful if pressed for their age.

To avoid doubt, if the volunteer is asked for a proof of age document, they must be truthful and say they are either not carrying one, or, if pre-arranged with the CPO organiser, provide a true and accurate document.

**Note:** It must be remembered that the test here is that the licensee asks for evidence of age documents when the patrons appears to be under the age of 25. It is not a test to see how well a volunteer can lie to bar staff.

### Recruiting suitable CPO volunteers

CPO and resulting prosecutions depend upon well - trained and credible volunteers. It is particularly important that volunteers are carefully selected and vetted using a fair, scrupulous and transparent approach. This section covers the factors to be considered in recruiting suitable CPO volunteers.

### Finding a volunteer

There are many sources of CPO volunteers, including:

- children of staff
- children of colleagues or people in personal or business networks
- local secondary schools
- SADD (Students Against Driving Drunk), which operates throughout New Zealand
- other youth organisations.

### The volunteer's age

To date, CPO volunteers have been aged from 15 to 17 years. Local knowledge and common sense should prevail in deciding on the appropriate age for volunteers - if they are too young (or young looking), the CPO results could give an inaccurate indication of the direct supply problem in an area.

### The volunteer's look and demeanour

Volunteers should represent their age group - that is, look and act their age. During the CPO, they should dress in their normal clothes and avoid appearing older than they are. Avoid hats, beanies, caps or other clothing that can 'disguise' volunteers' features. The volunteer should also act fairly and not go to any elaborate lengths to make a purchase.



At the court hearing, the volunteer should dress as they did on the CPO. Together with their photographs produced in evidence, this helps the judge form a clear picture of the retailer's perspective.

## Looks do matter

In May 2003, in a case before the Liquor Licensing Authority, the prosecution was compromised because the CPO used a tall and confident male volunteer with visible facial hair. The Liquor Licensing Authority commented: "In exercising our discretion under section 132 [- Variation, suspension, or cancellation of licences other than special licences, subsection (6)] of the [Sale of Liquor Act 1989], we do not believe that it is desirable to make a suspension order in respect of the off-licence. We make this decision because of our reservations about the young volunteer's maturity, and the way he went about his task" (see Kamer Holdings Limited LLA PH299-300/2003).

## Previous purchasing

Establish whether the volunteer has previously bought alcohol illegally – if they have do not use them and seek another volunteer.

## The volunteer's availability

The volunteer must be dependable and available at suitable times. CPO should not be conducted during school hours.

It is important to maintain regular contact with the volunteer and their parent(s)/caregiver(s), and keep them informed on the timing of the CPO or resulting court events. To prevent last-minute surprises, find out if and when the volunteer will be unavailable because of holidays, exams or other important commitments.

## Compensation for volunteers

It is common practice to thank volunteers for their time with a gift voucher (such as for music or books or for redeeming at a particular store) - irrespective of the CPO outcome. The voucher must not be used as an incentive to buy alcohol successfully.

The type of voucher and its value must be agreed between the CPO staff, the volunteer and their parent(s)/caregiver(s). If the volunteer will also be provided with food during the CPO, check with their parent(s)/caregiver(s) for any special dietary requirements.

## Protecting the volunteer's identity

In the event of a defended prosecution, the defence is entitled to all documents relating to an investigation. This means it is important to take precautionary steps to protect the identities of volunteers and their families.

The forms and procedures provided with these guidelines make this a straightforward process:

- The forms supplied with these guidelines require minimal personal information from volunteers and their families.
- Parental consent forms were not required by the previous Liquor Licensing Authority, as they accepted sworn briefs by CPO workers that confirmed volunteers and their parent(s)/caregiver(s) had been suitably informed and had given their consent. However, it is prudent to obtain written confirmation of parental consent before the volunteer undertakes their first CPO.
- Volunteers can be called to give their evidence and prove their age by summons, removing the requirement for copies of birth certificates in advance under disclosure.

Request name suppression to protect your volunteers. Volunteers and their parent(s)/caregiver(s) must be also advised to report any adverse incidents or contacts to the CPO organiser or Police. It was accepted by the previous Liquor Licensing Authority that the photographs of volunteers should not be released, but that they should be made available for viewing as and when required.

## Volunteer safety

To help ensure the safety of volunteers:

- they should always be accompanied by at least two adults on car journeys to CPO locations

- try to avoid any need for them to cross a busy road or exit the car from the driver's side
- at on-license premises, make sure they are supervised and protected at all times
- choose an appropriate CPO worker to liaise with the volunteer and their parent(s)/caregiver(s). They should be familiar with all the issues discussed in these guidelines.
- use the volunteer information sheet for initial discussions with the prospective volunteer. Provide them with an overview of a CPO and their role
- if they are interested in becoming involved, provide the volunteer and their parent(s)/caregiver(s) with copies of CPO - information for parents and volunteers
- contact the parent(s)/caregiver(s) to arrange a suitable time to meet and discuss the volunteer's participation
- make sure all parties understand what happens during and after a CPO
- make sure the volunteer reads and signs the Volunteer Briefing and Acknowledgement form (note they only need to supply their first name)
- obtain unequivocal verbal consent from the volunteer's parent(s)/caregiver(s) and note it for later reference. Keep a record stating:
  - the date, time, location and duration of your meeting with the volunteer's parent(s)/caregiver(s). Do not record their home address, phone numbers or any other personal details
  - who you met with. Refer to the volunteer by first name only and to their parent(s)/caregiver(s) in non-personal terms - for example, "I discussed the CPO procedure with Joe and his parents..."
  - that you received confirmation from the parent(s)/caregiver(s) that they are the volunteer's parent(s)/caregiver(s), and of the volunteer's date of birth and age
  - that you comprehensively explained all relevant CPO issues, reviewed the information forms provided earlier, and answered any questions
  - that, on the basis that the volunteer and their parent(s)/caregiver(s) were fully briefed, they gave their informed consent to participate in the CPO.

Having gained informed consent, give the volunteer a copy of the Volunteer Controlled Purchase Operation Notes. They will need to be familiar with them if they complete a successful purchase.

## Pre-operation procedures

### Pre-operation planning

Before every CPO it is vital to determine and agree on:

- the agencies that will participate (Police (essential), District Licensing Inspector, health agency, other agencies)
- where prospective volunteers will be sourced
- funding responsibilities - who supplies the money for purchasing the alcohol and who pays for volunteer vouchers, food and other purchases. CPO are now a widely acknowledged part of compliance activities, it is no longer deemed necessary to alert licensees before a CPO
- what potential actions or combination of actions will follow the operation - publicity, warnings, prosecutions or others can be determined
- follow-up measures such as help with training/control procedures for licensed premises
- resources and the timing and content of media releases and other publicity
- how confidentiality on the CPO will be maintained - who must/must not know about it?
- the premises that will be visited and the criteria for selection (such as previous complaints, other intelligence, the premises type)
- the number of premises that need to be visited to give context to prosecution if this is used. In Broadway Standalone Ltd. and Chhun PH 303-304/2003, the previous Liquor Licensing Authority explained, "...we believe that an order should be made, particularly when it is noted that 13 of the 21 premises which were visited, had sufficient systems in place to refuse to make the sales." This ratio needs to be balanced with the practical limitations of a volunteer's capacity to give evidence if multiple purchases are made
- who will prosecute - the Police or the District Licensing Inspector
- who will be prosecuted - the seller, the manager or the licensee
- the judicial forum to be used for prosecutions
- the contingencies for appealed decisions (considering factors such as costs and representation).

### Resources

The following resources are needed for an effective CPO.

#### Space

- A suitable briefing/debriefing room.

#### Personnel

Only minors purchasing alcohol or being present on licensed premises under the instructions of the Police acting in the course of their duties are exempt from prosecution under sections [243](#) - Buying of alcohol by people under purchase age and [244](#) - Minors in restricted areas or supervised areas, SASAA. Thus, Police are an essential partner in jointly run CPO.

- One CPO supervisor to direct proceedings.
- A minimum of two adults per car (including the CPO supervisor).

#### Volunteers

One volunteer is usually sufficient (minimum two for on-licensed premises), although volunteers may feel more comfortable in the company of a peer.

**Note:** Where two volunteers enter a premises and attempt to purchase alcohol, the selection of the alcohol and subsequent purchase must be undertaken by ONE of the volunteers only.

Alternating between volunteers when 'testing' licensed premises can also reduce an individual volunteer's follow-up work and time in court. There is no need to send consecutive volunteers into licensed premises to enable prosecution, nor is it a

requirement to demonstrate multiple sales from one premises. A single breach is sufficient. This point has been extensively discussed in the authoritative Court of Appeal judgment in *Christchurch District Licensing Agency Inspector v Karara Holdings Limited* (CA 178/02) and *New Zealand Police and others* (CA 179/02).

## Resources

- An unmarked car (with working interior light).
- A list of the premises to be visited and their addresses. Try to avoid sending volunteers into premises near their homes.
- A camera to photograph volunteers with a scale to show the volunteer's height.
- Money for alcohol purchases - allow roughly \$20 for each premises. Use a pre-loaded ATM card or similar as this is more likely to be the payment method of a minor and it comes with a receipt.
- Money for food or other incidentals.
- Communications equipment (phones, Police radio) notebook and pens.
- Self-sealing exhibit bags with labels, which are large enough for the evidence (Police issue bags are best).
- Sample bottles to be used to secure alcohol from open vessels (particularly if conducting CPO on on-licensed premises)
- Your identification - not the volunteer's (unless the volunteers have been asked to provide appropriate documentation).

## Forms

A good supply of the following forms:

- Volunteer Controlled Purchase Operation Notes.
- Licensed Premises Visit Summary form.

**Note:** The above prescribed forms are found in the appendix of the [CPO Guidelines](#).

## Final pre-operation briefing

Conduct a final briefing about an hour before setting out. This is your last chance to check and double-check your plan and that participants are prepared.

## Volunteers

- Ensure that volunteers know when and where to meet. Consider collecting them.
- Spend enough time going over the Volunteer Controlled Purchase Operation Notes with the volunteer - their observations recorded on the form will be crucial to a successful prosecution. Consider conducting a 'test run' in a licensed premises where there is no attempt to purchase. This could fine-tune the volunteer's observation skills. See '[Visiting licensed premises](#)' for more detail.
- Double check that the volunteer is not carrying identification.
- Discuss the alcohol product the volunteer will select. Products preferred by younger drinkers are most suitable. Set a spending limit compatible with the money to be issued.
- Confirm the volunteer's required response if asked their age, e.g. to offer their date of birth and let the seller work out their age, or to immediately tell the truth.
- Make sure the volunteer is appropriately presented and meets the standards described earlier in 'The volunteer's "look"'.  
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Take two photographs of each volunteer:

- One full length to portray their relative height, against a doorframe or similar reference point.
- One 'head and shoulders' shot that clearly reveals their face to give an accurate representation of their appearance at the time of the CPO.

Note down the volunteer's name, the date and time the photograph was taken and the photographer's name (CPO worker). These photographs are exhibits, so should be secured and handled with due care by the CPO organiser.

## Visiting licensed premises

### Conduct a 'test-run' first

Consider starting the CPO with a 'test run' to ease the volunteer into the task (e.g., a 'safe' licensed premises).

#### 'Test-run' for off-licensed premises

- Let the volunteer know it is a test run.
- Instruct them to enter the premises (unaccompanied) and find the product they would try to purchase, without taking it to the checkout.
- Ask them to be observant about who is working on the premises, and to observe briefly one person selling alcohol.
- Once back in the car, get them to complete the Volunteer Controlled Purchase Operation Notes and give the volunteer appropriate feedback.

#### 'Test-run' for on-licensed premises

- As above, **but** remember in this case the volunteer should not be entering the premises unaccompanied.

## Conducting an operation

Follow these steps to conduct a real-time operation.

Step	Action
1	Proceed to the first licensed premises to be tested. Where practicable, park the car within sight of the entrance and exit of each premises visited (to observe the volunteer).
2	Give the volunteer their final instructions and the money for the attempted purchase. Record the serial number of the note given. Remind them what to buy and what to say if asked their age. Emphasise that they will need to be particularly observant if a sale is made.
3	Note the time the volunteer enters and exits the premises.
4	Record the details of each licensed premises visited on the Licensed Premises Visit Summary form. Where possible, note the displayed name of the duty manager.
5	When the volunteer returns, complete the Licensed Premises Visit Summary form.
6	If the volunteer returns with alcohol, ask them to give it to the CPO supervisor along with any change or transaction receipt. Secure and label all the evidence appropriately.
7	If a sale was made, ask the volunteer to complete the Volunteer Controlled Purchase Operation Notes immediately - help or prompt them as required as they record their observations. Check that the form has been completed correctly.
8	Secure the documentation appropriately.
9	Interview the licensee/operator and staff immediately after the sale so as to clearly identify who made the sale. Arrange a follow up meeting with the licensee for a time within the next two working days.
10	Move on to the next premises and repeat the process.

## Where a sale is made

Follow these steps where a sale is made.

Step	Action
1	Identify the duty manager. If practicable, ask the volunteer or other CPO worker to note the name of the duty manager displayed in the licensed premises. Although a statutory requirement, it could be absent or inaccurate. To confirm who was on duty or working at the time, you will need follow-up correspondence or contact with the licensee.
2	Follow Police protocols in handling and securing evidence. If unsure, seek advice.
3	Remember, Police and/or the Inspector have the right to seize without warrant any alcohol purchased from licensed premises (Section <a href="#">268</a> - Power to seize samples of alcohol, SASAA). These powers may need to be exercised when alcohol is purchased from on-licensed premises and its removal from the premises challenged.

## Other considerations

Some CPO have used a pre-positioned observer to witness events surrounding a sale. While this is not a necessary procedure for successful prosecution, the presence of an adult observer should be used in CPO in on-licence premises, for the primary purpose of volunteer safety. Make appropriate arrangements for the volunteer's safe return at the end of the CPO. Stick to arranged timeframes and keep their parent(s)/caregiver(s) informed.

## Additional requirements for on-licensed premises

- A minimum of two volunteers must be used and they must accompany each other at all times during the visit to the licensed premises - especially when attempting to purchase alcohol.
- An observer (Police, Inspector or health agency representative) should be already in the premises and be able to view the volunteers at all times.
- If the volunteers fail to purchase alcohol, they must immediately leave the premises and meet their supervisors at a predetermined point.
- If the volunteers successfully purchase alcohol, they must immediately approach their observer and hand over the alcohol, along with any change and receipt they may have. Once this has taken place, the volunteers must leave the premises and meet their supervisors at a predetermined point.
- The observers must be immediately available to intervene and protect the volunteers during their time on the licensed premises. Any alcohol that has been purchased must be secured following normal Police protocols in handling and securing evidence, e.g. secured and sealed in an appropriate container (the alcohol must be retained in case the potential defendant disputes that the alcohol contains more than 1.15 percent alcohol by volume within 20 working days before any hearing, section [273](#) - Matters of proof relating to content of alcohol, SASAA).

## Debrief of volunteers

Carry out a formal debrief of the volunteers to ascertain their thoughts on the CPO. This should include what worked, what didn't work and any suggestions on how the CPO could be improved. This could be in the form of soliciting feedback from the volunteers throughout the course of the CPO.

## Follow-up action after a CPO

Once a CPO has been completed, there are four options for follow-up action:

- Publicising the CPO and its outcome - whether or not any sales were made.
- Working with licensees and their staff to improve their performance and avoid further transgressions.
- If a successful purchase was made, negotiating a suspension of the licence and/or managers certificate by consent.
- If a successful purchase was made, prosecuting the seller, licensee or manager through either the District Court or the Authority.

## Publicity and community action

Publicity can be a powerful way to alert and enrol the community in youth alcohol issues.

Some communities have used CPO as a catalyst for initiating change in the community. In one community (Westport) the agencies running the CPO determined that rather than prosecuting licensed premises through the Authority or District Court to use a form of public community diversion..

Well - planned and well - timed media releases will significantly improve awareness in the community and throughout licensed premises. As this is part of the purpose of CPO, media follow-up (both locally and nationally) should always be considered - whether or not sales were made. Consideration can be given to advising all licensed premises tested during the CPO of their results.

Note that media releases usually provoke questions from journalists, so it is important to agree on an agency point of contact. Provide this person's contact details in the release and try to anticipate journalists' questions or challenges. If more than one agency is commenting, consider establishing a consistent 'party line'. Contact the National Media Centre for any support or advice needed.

These guidelines include examples of media releases and letters to premises tested.

Consideration should also be given to formally acknowledging those licensees that did not sell alcohol to the volunteers during the CPO. This acknowledgement could take the form of a letter from one of the participating agencies for example.

## Working with licensees and staff

Generally speaking, operators of licensed premises caught selling to minors become motivated to improve their performance and avoid further transgressions. However, anecdotal evidence suggests that we cannot rely on isolated prosecutions to correct errant retail practices permanently. There is a need to work closely with licensees and their staff in a multi-layered, integrated approach.

## A case in point

For example, in one province, five out of seven premises prosecuted for selling alcohol to minors during a CPO sold again on a follow-up CPO 14 months later. During their original appearances before the Authority, the operators of these premises had strenuously argued they had comprehensively reviewed and improved their staff training and control systems.

Licensing staff working in the province observed that:

- training and control systems. They appeared to have moved from their 'on alert' status and seemed reliant on under-25 signage to prevent sales to minors. There was no tangible in-house follow-up or measurement of day-to-day staff performance
- procedures after the first CPO, a 16-year-old volunteer was sold alcohol without question on the second CPO - this despite staff having been explicitly advised that they would be summarily dismissed if they sold alcohol or tobacco to minors
- checkout operators' discretionary power to sell alcohol and tobacco (a supervisor's intervention and approval were required for the transaction to proceed). The ineffectiveness of this procedure led licensing staff to conclude that shifting the responsibility up one level merely shifts the pressure to complete the sale up one level.



## What works?

The only premises that didn't sell on the second CPO had established comprehensive staff training, employment provisions, control systems and staff monitoring systems. It also involved local licensing staff in its systems review - ensuring a 'good practice' approach to improving its compliance regime.

Other initiatives included:

- enabling all staff to attend sessions with Police and health agency staff and to acquire information on good practice in ID scrutiny, an overview of the Sale and Supply of Alcohol Act 2012's offences and penalties and their employer's policies, disciplinary procedures and support structures. Staff also had the opportunity to contribute their perspectives and participate in developing effective and realistic control practices
- making changes at the point of sale to reduce pressure on staff to complete transactions quickly because of a 'productivity' bonus system. This allows staff time to scrutinise purchases
- creating new management reports to gather checkout operators' individual alcohol sales statistics for a single shift. The information shows:
  - the number of transactions that include alcohol or tobacco products
  - of those transactions, the number and percentage of operator ID challenges
  - of those challenges, the number and percentage of declined sales

This allows management to compare operator performance across all checkouts, and detect and act on anomalies daily. They can also compare the supermarket's mean daily, weekly and monthly performances with those of others in the chain.

The premises also:

- developed a 'test purchase' protocol to test operator compliance regularly
- positioned highly visible signage next to checkouts and stock, advising customers (and staff) of the under-25 ID protocol
- empowered checkout operators with discretion for every alcohol and tobacco sale. Supervisors were available to support checkout staff where necessary and reviewed their performance daily.

## Valuable lessons

Simply training staff not to sell to minors, or threatening them with disciplinary action, is likely to be ineffective in the long term. A multi-layered approach such as that described above is likely to provide better protection to licensees and their staff.

Licensees could also be encouraged to use their data more effectively and also implement simple manual systems to gauge and respond to individual staff performance. For example, staff could record and confirm the number of times they challenge customers on their age and, of those challenges, the number of customers refused service. This is easily obtainable and useful information for licensees and duty managers.

It is worth noting that the previous Liquor Licensing Authority granted (relative) mitigation to licensees that demonstrated a comprehensive and committed approach to preventing alcohol sales to minors (Brougham Tavern Ltd. and others PH 216/2002 - 229/2002, also Waitakere Licensing Trust and Herataka PH 1501-15-5 2008)).

## Negotiated suspensions by consent

Negotiating suspensions enables flexibility and greatly assists with obtaining positive outcomes in a timely manner. They avoid the need for the Authority to conduct a public hearing, but must still be accompanied by section [280](#) - Variation, suspension, or cancellation of licences other than special licences and/or section [285](#) - Suspension or cancellation of manager's certificate, SASAA applications to the authority.

Issues to consider:

- Unanimous agreement is reached among all partner agencies.
- Familiarisation with the general guidelines laid out by the previous Liquor Licensing Authority with regard to sanctions that may be negotiated between parties where a period of suspension by consent is agreed.
- Check if licensee or manager has any previous history of non-compliance.

- Take into account any mitigating or aggravating circumstances.

In discussion with the licensee or manager in relation to negotiated settlements, it should be noted that they have three options as follows:

- A public hearing to have the matter placed before the Authority for a full hearing, with all evidence being presented; or
- Agree to the circumstances, i.e. that a sale to a minor took place. Then written or oral submissions can then be placed before the Authority for them to determine the penalty ; or
- Full agreed settlement, for confirmation by the Authority.

It is to be noted that:

- **All** negotiated suspensions **must** be notified to the Authority for consideration and determination.
- The full agreed option should only be reserved for first time offenders.
- Any subsequent breaches need to, at a minimum, have the Authority determine the course of action.

## Prosecutions

The following are key points in CPO prosecutions:

- Only the Authority and the District Court deal with CPO offences under SASAA.
- The Authority is the appropriate (and ultimate) forum for prosecuting licensees and managers (that is, holders of General Manager's Certificates).
- The District Court is the only forum for prosecuting a seller who is not a licensee or manager.
- Either Police or Licensing Inspectors can initiate ARLA prosecutions against licensees or managers. There is no requirement to put licensees or managers before the District Court prior to an ARLA hearing.
- Either Police or Licensing Inspectors can prosecute licensees, duty managers or sellers in the District Court. In this forum, the offences are prescribed and limited and a higher standard of proof is required. The Police generally have greater expertise in working with the District Court system than Licensing Inspectors.
- Decisions on whether cases should be prosecuted via the Authority or District Court should be carefully considered - prosecutors are recommended to consult other agencies before proceeding. Reviewing recent ARLA (and previous Liquor Licensing Authority) High Court and Appeal Court decisions should form part of this review before proceeding.
- Prosecutions before the District Court or the Authority can also be considered when processing new or renewal applications for licensees and duty managers.

## Prosecutions through the District Court

District Court action must be taken within six months of the offence and is initiated with the lodging of a charging document to the defendant. The cases follow normal court procedures, with decisions based on proof beyond a reasonable doubt. Offenders who enter guilty pleas or are found guilty, may receive convictions for each offence.

District Court prosecutions can be taken against:

- the licensee or manager of any licensed premises who sells or supplies, or allows any alcohol to be sold or supplied, to a minor (section 239 - Sale or supply of alcohol to people under purchase age on or from licensed premises, subsection (1), SASAA)
- the seller - the person who physically took the payment and released the alcohol to the minor to complete the sale (section 239 - Sale or supply of alcohol to people under purchase age on or from licensed premises, subsection (2), SASAA).

Penalties include:

- for licensees, a fine of up to \$10,000 and licence suspension for up to seven days
- for managers, a fine of up to \$10,000
- for sellers, a fine of up to \$2,000.

## Mandatory District Court follow-up

The Registrar of the District Court is required to notify the Authority of any convictions of licensees or General Manager's

Certificate holders (section [278](#) - Notice of prosecution or conviction of managers and licensees, SASAA). This notification does not automatically initiate a hearing before the Authority - this requires a further application under section [280](#) - Variation, suspension, or cancellation of licences other than special licences or [285](#) - Suspension or cancellation of manager's certificates, SASAA.

It is worth noting that SASAA section [281](#) - Suspension or cancellation of licences by licensing authority in respect of certain offences complements section [278](#) - Notice of prosecution or conviction of managers and licensees in the case of a successful Police prosecution in the District Court under sections [239](#) - Sale or supply of alcohol to people under purchase age on or from licensed premises subsections (1) and (2), SASAA.

Section [281](#) - Suspension or cancellation of licences by licensing authority in respect of certain offences, SASAA prescribes an explicit requirement for Police to refer convictions to the Authority, but has no clear statutory prescription should the Licensing inspector (or people who are not Police constables) prosecute. Licensing inspectors who initiate prosecutions in the District Court under these sections (and others) will need to consider how to proceed post-conviction. In all cases, collaboration or consultation with Police is strongly advised.

## Prosecutions through the Authority

The authoritative Court of Appeal judgment (*Christchurch District Licensing Agency Inspector v Karara Holdings Limited* (CA 178/02)) affirmed the previous Liquor Licensing Authority's status and jurisdiction as the specialist body with regard to the Sale of Liquor Act 1989, and recognised its capacity for judicial consistency in prosecuting licensees and managers under the Sale of Liquor Act 1989 sections 132 - Variation, suspension, or cancellation of licences other than special licences and 135 - Suspension or cancellation of manager's certificates. These sections gave Police and Sale of Liquor inspectors the power to make applications in relation to licences and Managers' Certificates to the Liquor Licensing Authority at any time.

The Liquor Licensing Authority imposed what are perceived to be 'stiffer' sanctions than typical District Court fines - these include suspensions, cancellations and variations. As a commission of inquiry, the standard of proof required by the Liquor Licensing Authority, and subsequently the Authority, is based on the 'balance of probabilities', which is a more flexible standard than that of the District Court.

Sections [280](#) - Variation, suspension, or cancellation of licences other than special licences, subsection 3(a) and [283](#) - Variation, suspension, or cancellation of special licences, subsection 3(a), SASAA, give the grounds that most apply to sales to minors - that is, that the licensed premises have been operated in breach of the Act or licence conditions, or otherwise improperly; and that the manager has failed to manage the licensed premises properly.

## Reviewing and evaluating operations

Following a [CPO](#) the agencies involved should undertake a review of the process. The review might be formal or informal. The review of the process will ideally be hosted by the lead agency for the CPO but this role may be taken by one of the other agencies.

Key questions for a review:

- How was the operation run? Which parts of the operation ran smoothly and which parts should be altered for future [CPO](#)?
- Were the right people from the right agencies involved?
- What follow-up was used? Should the same process be used the next time or a different approach be taken?
- How well did the volunteer selection, briefing and implementation work? How could this be improved?
- How well did the inter-agency collaboration work? How could this be improved?

One of the agencies should offer to write minutes for distribution to record responses to the questions raised.

## Reporting

CPO are currently reported in NIA using the **7A** task code. There may be multiple licence premises checked under the one 7A.

## Recording in NIA with new code

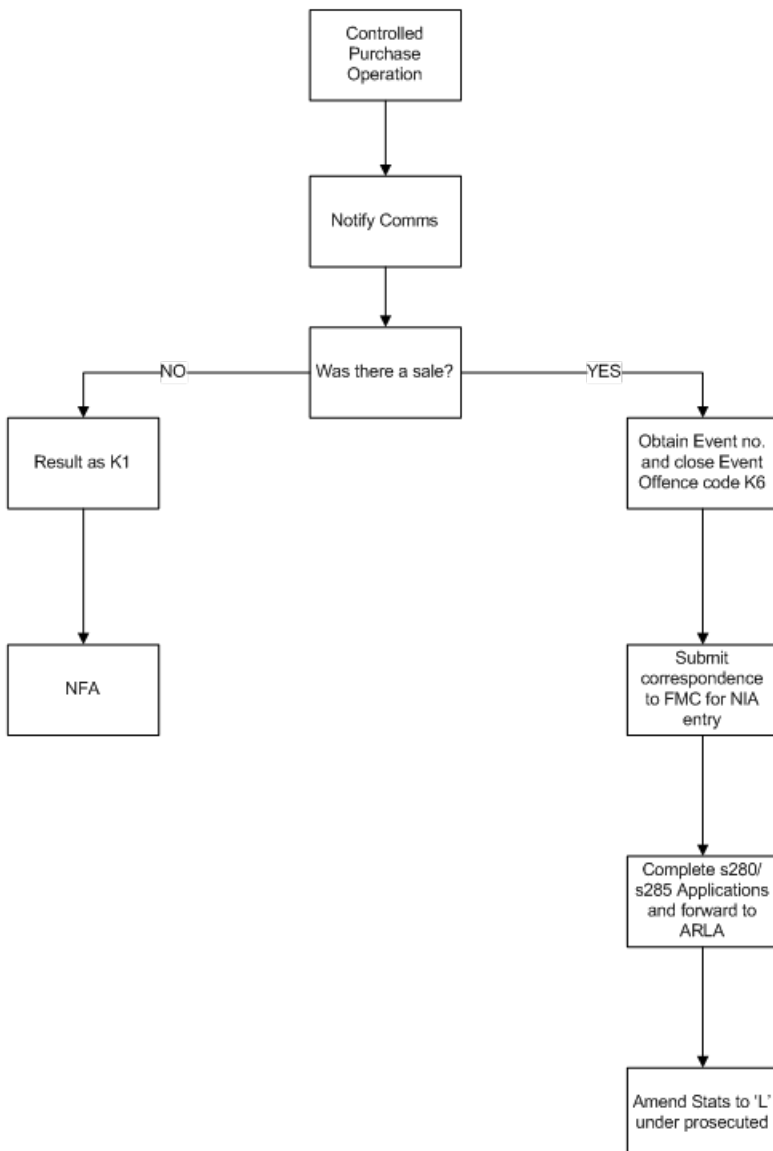
The new measure we have is for an enforcement application to be lodged with the Alcohol Regulatory and Licensing Authority ( the Authority) within one month of the failure.

This was not able to be done as there wasn't a specific code for CPO. However, a new code has been created which is **7A** and this is a task code for CPO.

Police doing a CPO must advise Comms using this new code and if there is a failure the task will be resulted as K6 (if there is no failure it will be reported as a K5).

This must be recorded in NIA(both the failure and the compliance check) and through Business Objects we will be able to audit the number of CPO completed and ensure that failures are reported to the Authority within a month.

## Flowchart



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