ALCOHOL AND ITS CONTRIBUTION TO VIOLENCE:
NEW DIRECTIONS FOR POLICING ALCOHOL RELATED VIOLENCE, CRIME AND ANTI-SOCIAL BEHAVIOUR IN NEW SOUTH WALES

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Alcohol and its Contribution to Violence:
New directions for policing alcohol related violence,
crime and anti-social behaviour
in New South Wales

A paper accompanied by
"The Alcohol Crime Connection Video"

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Abstract
There is a very strong association between alcohol, violence and crime in Australian and overseas research. Recent research conducted by New South Wales and Queensland Police Services has shown a very strong relationship between alcohol and calls for police service. These utilised an incident survey form to allow operational police officers to record their assessment of alcohol involvement for all incidents, not just for arrests. The New South Wales study found high levels of alcohol involvement, with 77 percent of street offence incidents, (assault, offensive behaviour and offensive language) found to be alcohol related. Also identified was the high proportion of offences occurring in or near licensed premises. Sixty percent of all alcohol related street offences were included in this category. Other offences which also received high alcohol related assessment were assault 73%, malicious damage 58%, domestic violence 40% and noise complaints 59%. Broadly similar results were obtained by the Queensland Police Service with specific offence alcohol involvement being: serious assault 82.4%; assault 45.9%; stealing with violence 66.7%; attempt suicide 63.6%; street disturbances 62.8%; domestic disturbances 53.3%; and noise complaints 46%.

The levels of alcohol involvement found in the New South Wales prompted a radical review of the New South Wales Police Service response to alcohol related violence, crime and anti-social behaviour. A training package based on a video and resource manual was developed. This process together, with an Alcohol, Crime and Licensing Discussion Paper now guide future police attention to alcohol related violence, crime and anti-social behaviour.

A number of policy proposals for change in dealing with the negative effects of alcohol are proposed including: dealing more appropriately with intoxication by removing intoxication as a defence or mitigation factor; creating top-up sentencing options for offences involving intoxication, particularly where violence is a factor; action to deal with alcohol intoxication problems associated with domestic violence; introduction of "Dram Shop Liability" legislation as "an engine" to drive introduction of require responsible intervention by the industry, management and bar staff; and development of partnerships with government and other agencies, the industry and the community to deal with the negative outcomes of alcohol misuse including violence, crime and anti-social behaviour.
Alcohol related crime, violence and anti-social is not a new phenomena. Scullard (1959) commenting on the popularity of mystical worship of the Greek wine-god Dionysus (Bacchus) in ancient Rome records its celebration was often accompanied by intoxication, crime and immorality. So much so that in 186 AD the Senate checked the spread of this cult which it regarded as a threat to public order.

Almost 2000 years later the National Committee on Violence (1990) noted:

It is self evident that a strong association exists between alcohol and violent behaviour, although the exact nature of the relationship is not clear...

This very strong association between alcohol, violence, crime and anti-social behaviour has been the focus of recent research in Australia. In 1968 Bartholomew (1985) found 59 percent of Victorian prisoners had consumed alcohol before committing their offences. Repeating the study, eighteen years later in 1983, he found that the percentage had increased to 81 percent. Of particular interest is the finding that more prisoners with offences against the person reported consuming alcohol before their offences than those for property offences. Surveys of prisoners in Tasmania (White and Boyer 1985) and Western Australia found similar results (Taylor 1988 and Indermauer 1990). An analysis of a random sample of 1988 New South Wales Police Incident Reports found forty percent of serious assaults and common assaults were "alcohol related." (Robb 1988). In 1991, Bradbury (1984) found 84 percent of a sample of violent offenders in New Zealand had consumed alcohol prior to commission of an offence.

In a literature review, including examination of American prison studies, Smith (1983) reported that a range of 8 and 100 percent of offenders reported drinking at the time of their offence. He also reported estimates of positive alcohol readings in assault cases ranged between 24 and 72 percent for various samples. The Senate Standing Committee on Social Welfare (1977) cited a study of 644 violent assaults in which 73 percent of the offenders had consumed alcohol before committing the offence.

Research examining convicted Victorian rapists (Hodgens and colleagues 1972) found that 49 percent reported they were heavy drinkers or alcoholics; 66 percent reported that they had been drinking before committing the offence; 10 percent said they had been drinking heavily prior to the offence and a further 10 percent said that they were drunk. The Western Australian Task Force on Domestic Violence (1989)
has reported that 42 percent of domestic violence incidents involved alcohol. Interestingly, a similar level of alcohol involvement was obtained in recent New South Wales research (Ireland and Thommeney 1993).

English research (Jeffs and Saunders 1983) found a strong relationship between previous alcohol consumption and offending behaviour, particularly for public order offences (roughly equivalent with street offence incidents in the New South Wales research below) It established a strong connection between alcohol consumption, offending and anti-social behaviour; almost 80 percent of assault offenders, more than 80 percent of breach of the peace offenders and almost 90 percent of criminal damage offenders reported consuming alcohol in the 4 hours prior to commission of the offence. They also reported the impact of police enforcement of existing liquor control legislation, similar in most respects to New South Wales (and generally Australian) liquor laws, on the reported levels of some classes of crime. After the enforcement intervention there was a significant reduction of 19 percent in public order and in other alcohol related crimes. Similar results were obtained by Sussex Police (UK) (nd).

American research by Roncek and colleagues (1989 a,b and 1991) examined the association between residential blocks with and without bars and taverns in United States cities. The studies found that residential blocks with bars and taverns were "hot spots," with higher levels of "Index Crimes,"1 than residential blocks without bars and taverns.

In addition to the strong contribution of alcohol to offending behaviour, Fulde (1991) and Arro (1992) have also identified its equally strong connection with victims of violence.

Alcohol related crime and violence impacts in various way on our society. There is heavy impact on emergency services including: police, ambulance and emergency hospital wards. The annual costs (health, economic and social) to the Australian community of alcohol related problems is estimated to be in the order of $6 billion (Lapsley and Collins 1990). Although less tangible there is also significant loss of enjoyment and social utility through fear of crime in the general community. The misuse of alcohol and the problems associated with it have substantial costs to the

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1 United States Federal Bureau of Investigation - Uniform Crime Index Reports. Crime include: murder, rape, assault, robbery, burglary, grand theft, auto theft and arson.
community in terms of crime, violence, anti-social behaviour, injury, illness, disability, death and family disruption.

Devery (1992) in an examination of assault and break and enter incidents in the Sydney municipality of Waverley found that a large proportion of assaults occurred in locations in the vicinity of clubs, hotels and restaurants. Homel and colleagues (1991a,b) and (Arro and colleagues 1992) have also highlighted the very strong connection between licensed premises and violence.

The New South Wales Police Service (Ireland and Thommeny 1993) conducted research into the impact of alcohol on policing by way of an incident survey conducted over a four week period in six metropolitan Sydney Police Patrols during 1991. The main findings were:

Of 684 incidents 427 or 62% were alcohol related;
77% of public order incidents (assaults, offensive behaviour, offensive language) were alcohol related;
60% of the alcohol related incidents occurred in or near licensed premises;
50% of alcohol related offences occurred on Friday and Saturday;
62% of alcohol related incidents occurred between 10pm and 6am;
41% of incidents occurred between 10pm and 2am;
91% of all incidents between 10pm and 2am were alcohol related.

Results for each incident category are set out below.

Offensive Behaviour 84%;
Assault 73%;
Offensive Language 70%;
Noise Complaints 59%;
Malicious Damage 58%; and
Domestic Violence 40%.

Levels of alcohol involvement were very high, with 77 percent of street offence incidents, (assault, offensive behaviour and offensive language) found to be alcohol related. Also identified was the high proportion of offences occurring in or near licensed premises. Sixty percent of all alcohol related street offences were included in this category. Other offences which also received high alcohol related assessment were assault 73%, malicious damage 58%, domestic violence 40% and
noise complaints 59%. Drink driving offences were, by definition, 100 percent alcohol related.

Broadly similar research by the Queensland Police Service on the connection between alcohol and police calls for service conducted in South East Queensland (Arro and colleagues 1992) also found disturbingly high levels of alcohol related incidents. The study found:

- Approximately on quarter of all incidents attended by police were alcohol related; and over one third of incidents that occurred in the inner city areas were alcohol related;
- Specific offences that had a higher likelihood of being alcohol related were disturbances (especially street disturbances, domestic disturbances and noise complaints) and offences against persons (especially serious assault, assaults and stealing with violence).
- Almost half of alcohol related incidents occurred in or near licensed premise where the alcohol was consumed; over one quarter of these occurred within five metres of the premise;
- The majority of alcohol related incidents occurred between 6pm and 6am; and the majority of these occurred during the weekend period of Friday, Saturday and Sunday.

Results for each incident category are set out below:

- serious assault 82.4%;
- assault 45.9%;
- stealing with violence 66.7%;
- attempt suicide 63.6%;
- street disturbances 62.8%;
- domestic disturbances 53.3%; and
- noise complaints 46%.

These results demonstrate very high correlation between alcohol and calls for police service and are similar levels to those found in the New South Wales study. Both demonstrate a disturbingly high correlation between alcohol and offending behaviour. Of particular concern in the Queensland study is very high correlation with incidents of a violent nature: 82.4% serious assault; 45.9% assault; 66.7% stealing with violence were found to be alcohol related.
While some differences in incident classification are apparent between the New South Wales and Queensland works there is a broad similarity in results which is best shown in tabular form. Table 1 below sets out the alcohol related proportions for incidents found in the New South Wales and Queensland studies.

<table>
<thead>
<tr>
<th>Incident Class</th>
<th>Incident Type</th>
<th>New South Wales</th>
<th>Queensland</th>
</tr>
</thead>
<tbody>
<tr>
<td>Behaviour</td>
<td>Offensive behaviour</td>
<td>70</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Offensive language</td>
<td>70</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Street offence incidents</td>
<td>77</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(Assault, offensive behaviour, and offensive language)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Street disturbances</td>
<td></td>
<td>62.8</td>
</tr>
<tr>
<td>Noise</td>
<td>Noise complaints</td>
<td>59</td>
<td>46</td>
</tr>
<tr>
<td>Damage</td>
<td>Malicious damage</td>
<td>58</td>
<td></td>
</tr>
<tr>
<td>Violence and Self Harm</td>
<td>Serious assault</td>
<td></td>
<td>82.4</td>
</tr>
<tr>
<td></td>
<td>Stealing with violence</td>
<td></td>
<td>66.7</td>
</tr>
<tr>
<td></td>
<td>Assault</td>
<td>73</td>
<td>45.9</td>
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<td></td>
<td>Domestic disturbance</td>
<td></td>
<td>53.3</td>
</tr>
<tr>
<td></td>
<td>Domestic violence</td>
<td></td>
<td>40</td>
</tr>
<tr>
<td></td>
<td>Attempt suicide</td>
<td></td>
<td>63.6</td>
</tr>
</tbody>
</table>

The broad literature on the connection between alcohol, violence, crime and anti-social behaviour, in particular the New South Wales and more recently Queensland Police results, may surprise some in our community, particularly the alcohol industry. They are certainly no surprise to police officers and health workers who must confront the reality of alcohol, violence, crime and anti-social behaviour on a day to day basis. While it is true to say that the available data on alcohol, violence, crime and anti-social behaviour are disturbing it is necessary to move from mere recording, to
formulation of a strategic position on the policing of alcohol. The New South Police Service has developed a comprehensive strategy which has moved from narrow and simplistic regulation of licensed premises to one concentrating on identified alcohol, violence, crime and anti-social behaviour locations.

**The New South Wales Police Strategy**

These results, while confirming widely held police beliefs about the impact of alcohol on police service delivery, were so significant in terms of alcohol related violence, crime and anti-social behaviour that the New South Wales Police Service had to rethink its traditional approach to this issue which has largely been based on the concept of regulating licensed premises by specialist police. While licensed premises are an essential component of policing of alcohol, its effectiveness needed to be improved. The narrow current licensing approach does not take account of the large number of alcohol-related crime incidents that occur away from these premises.

The issue of Alcohol Related Crime is high on the list of the New South Wales Police Service corporate priorities. It has been determined as one of the organisations six key result areas for the period 1993 - 1996 to achieve the Service corporate vision of: *The safest streets in Australia by the end of the decade* (NSW Police Service 1993).

The New South Wales Police Service approach to impact on alcohol related crime, violence and anti-social behaviour is consistent with the Draft National Drug Strategy and the New South Wales Alcohol and Drug Strategy represents a strategic focus on the issue in place of the traditional, narrow law enforcement agency response through regulation of liquor licensing laws. The broader concept of Alcohol Related Crime is the prime goal of the police strategy.

Until recently the "licensing approach" - i.e. the basic combination of specialist police focussing on licensed premises - has remained the standard police approach to alcohol related crime. The theory was that alcohol related crime problems would be largely controlled if the situation inside the licensed premises was regulated. While the New South Wales research and that of by others has identified hotels and clubs as prime locations for alcohol related crime and violence these locations do not account for all such incidents.

Adoption of the wider alcohol related crime definition broadens the enforcement focus, applied by police:
**Locations are increased.** Licensed premises are only one of the problem areas. Trouble spots may include street locations, domestic situations, as well as licensed premises.

**The range of legislation used is expanded.** The Liquor Control Acts\(^2\) are used as before, but other legislation, whether alcohol specific or not, is brought into play where alcohol problems occur.

**The range of offences seen as alcohol related is expanded.** Rather than looking only at alcohol specific offences, other offences such as assaults where alcohol plays a significant part are included.

The approach being promoted is one which addresses the particular needs of groups most vulnerable to alcohol related crime and violence, and acknowledges the relationship between levels of crime and anti-social behaviour and social, economic and environmental conditions.

The new New South Police Service approach is based on the following principles:

Focus to be on the NSW Police Service corporate objective of achieving the safest streets in Australia by the end of the decade.

The broader concept of alcohol-related crime is the prime goal of the police strategy, not the narrower concept of licensing.

Regulation of licensed premises is one part of the alcohol-related crime strategy. It also includes other sources of alcohol-related problems in the streets, waterways, residences, shopping malls, parks, beaches and roadways.

Serious crime trouble spots require equal attention to activities inside licensed premises as to activities in the general neighbourhood.

Use of Intelligence criteria to determine what premises and locations are serious alcohol-related crime spots.

Not to regulate all the licensed premises in NSW. Police should pay attention to the problem premises.

Alcohol-related crime is a patrol policing problem and not simply a licensing problem for specialists.

Development of patrol plans for alcohol-related crime.

Legislation used against alcohol-related crime is not to be restricted to the Liquor Act and Registered Clubs Act.

Use four operational strategies against alcohol-related crime:

- intelligence based identification of trouble spots;

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\(^2\) In New South Wales the Liquor Act and the Registered Clubs Act which control hotels, clubs, bottle shops and other liquor outlets. In other States and Territories similar legislation applies.
problem oriented approach to long-term trouble spots; 
increased enforcement but more tightly targeted on trouble spots; and 
greater community involvement.

The reduction of alcohol related crime, violence and anti-social behaviour requires commitment at every level within the Police Service. To date the following implementation initiatives have taken place.

Launch of the video and resource manual package has been conducted at Parliament House and endorsed by the three Ministers for Police, Health and the Chief Secretary.

A progressive launch of the video and workshop package has been conducted at each Region meeting to Region Commanders and District Commanders. Each District will hold an alcohol related crime workshop for all Patrol Commanders within the District.

Each Patrol will develop an Alcohol Related Violence and Crime Strategic Plan to guide policing within the Patrol.

**Possible Strategies to Impact on Alcohol Related Violence, Crime and Anti-social Behaviour**

Alcohol related violence, crime and anti-social behaviour have very complex origins. They clearly will not be amenable to simple solutions but will require a mix of community, legislative, behavioural and industry initiatives to reduce the significant associated social, human and economic costs. There are a number of strategies that might be followed. Some possibilities are set out below.

**Interagency Approach to Alcohol Related Violence and Crime**

There is no single cause of violence, crime and anti-social behaviour. It follows there is no single remedy. Solutions must be developed in partnerships which involve all appropriate agencies, the general public and licensed premises within coordinated and comprehensive policies.

The Police Service approach through the Alcohol Crime Connection video is one of partnership. Three New South Wales government agencies were involved in its production: Department of Health, Chief Secretary's Department and the Police Service. In addition, there was significant contribution from industry members and the community.
**Working with Community**
The new New South Wales Police Service direction on alcohol violence and crime includes cooperation and support for local community initiatives to deal with alcohol related violence and crime.

One particular community project developed by Council of the Municipality of Waverley is a pilot to promote application of responsible serving practices in hotels and clubs in the area has received Police Service support. While there is cooperation from managers and owners at the local level, unfortunately, some of the industry associations have been less supportive.

The Police Service, with the Eastern Sydney Area Health Service, is jointly replicating the West End approach to alcohol related violence in and around licensed premises in the Kings Cross and Oxford Street areas. This project has been supported by the National Campaign Against Drug Abuse - Drug Crime Prevention Fund.

**Working with the Industry**
The Police Service has established Police Liquor Industry Consultative Committees in areas where alcohol related crime, violence or anti-social behaviour are a problem. These committees provide an opportunity for police, licensees, managers and others to discuss problems in a non threatening environment. They also provide an opportunity for solutions to be found without necessarily resorting to the criminal sanctions and court hearings. Prosecution through the courts remains as an option of last resort.

The New South Wales Police Service is aware that the hospitality industry, through its Liquor Industry Ministerial Advisory Committee, is developing an industry strategic plan aimed at reducing alcohol related crime, violence and anti-social behaviour. While somewhat reluctant in the past the industry has now recognised the role of alcohol in violence, crime and anti-social behaviour. The Police Service has offered to work in cooperation with the industry to deal with this problem.

There is scope for the industry to take a much greater role in dealing with associated problems. The English Portman Group has conducted original research into public

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3 A liquor industry consultative committee established by the Chief Secretary the Hon Anne Cohen who has responsibility for the Liquor Control Acts in New South Wales.
order problems (Marsh and Fox Kirby 1992) and violence in and around licensed premises (Marsh 1990).

**Alcohol and Domestic Violence**

New South Wales Police Service (Ireland and Thommeny 1993) research has suggested that alcohol was involved in 40% of domestic violence incidents. This is similar to the Western Australian Task Force on Domestic Violence (1989) which found 42% of incidents alcohol related. Queensland Police Service research (Arro and colleagues 1992) found that 53.3% of domestic violence incidents were alcohol related. Feminists have argued that domestic violence is significantly a male violence problem that rightly demands strong attention. They have also argued that to act against the substance alcohol is to blame alcohol and thereby deny or dilute the central role of underlying violence by some males to females. While accepting the broad feminist position on male behaviour, the very strong association between alcohol and domestic violence demands specific attention not-with-standing. There is a very large overlap between domestic violence incidents and alcohol related domestic violence incidents and actions against alcohol related domestic violence offers a win-win situation without threatening the significant feminist achievement of placing male violence against females on the public agenda. The situation is best shown diagrammatically.

![Diagram of Alcohol Related Violence and Domestic Violence Overlap](image)

Possible initiatives to address the alcohol related component of domestic violence and more general violence offences which involve alcohol are to be found in the New South Wales Inebriates Act (1912). The Act is of interest for it has three potential application to alcohol related violence:
First because it establishes a principle of dealing with intoxication in a positive and constructive manner;  
Second, by dealing with alcohol related offences, particularly those involving assaults or violence against women or children; and 
Third, as it strikes at the proposition that those who are intoxicated at the time of their offences should have a possible defence or mitigation available.

While the Inebriates Act is currently in limbo and is programmed for removal from the statute books its provisions offer some possible responses to alcohol related domestic and other violence. Section 3(1) allows a person in appropriate circumstances to be required to enter a recognizance "... to abstain from intoxicating liquor and intoxicating or narcotic drugs ... for a period of not less than 12 months."
Application of these provisions would create a situation where the violent behaviour could be addressed, where appropriate by arrest, or an apprehended violence order and the alcohol abuse problems could be addressed by a recognizance in relation to alcohol consumption. In this application of the Inebriates Act would be very similar to the current Apprehended Violence Order approach. Additionally, police alone should also be able to make an application under the Inebriates Act where alcohol is a factor in the commission of any violence offence.

Section 11 of the Inebriates Act also provides a useful framework for a top up sentence where intoxication is a factor in a general offence or an offence involving violence to women or children is involved. Minor amendments to these provisions could facilitate a top up sentence for intoxicated violence offenders.

Current action by way of arrest or Apprehended Violence Order do not ultimately address the real problem with many domestic disputes where an ongoing alcohol problem exists. While police often attend the same troublesome licensed premises, they also have a similar experience with domestic disputes. Their present options are to arrest, take out an Apprehended Violence Order, utilise the Salvation Army or other assistance service or settle the dispute and leave. The victim frequently wants to withdraw charges a few days later. None of these options adequately attempts to deal with long term underlying problems such as alcohol abuse. There needs to be an examination of new mechanisms to deal with domestic disputes that addresses long term problems like the alcohol factor and how to deal with it.

It is not suggested that in proposing strategies to deal with alcohol abuse problems that there would be any dilution in effort to address male on female violence. But that
there is a recognition that domestic violence is a complex phenomena, demanding not single and simplistic solutions but a complex mix of policy actions.

In addition to strategies proposed by the use of the Inebriates Act provisions the question of alcohol at the location of domestic violence locations also arises. Authority has been granted in New South Wales for seizure of firearms in domestic violence situations. This based upon the use of firearms in a number of horrendous domestic homicides. It is argued on similar evidence of strong connection between alcohol and domestic violence incidents, that similar seizure action should be taken with all alcohol at the scene of domestic violence incidents. While it is appreciated that alcohol is readily available in our society in domestic violence situations. However, where alcohol is assessed to be involved, a bail condition of abstinence should be applied.

**Reform of the Law to More Appropriately Deal with Intoxication**

There is a paradox in the way our society deals with different classes of alcohol related offences that can no longer be ignored. Alcohol is the central ingredient in drink driving offences where the responsibility remains with the individual when drinking and driving. It is also a central ingredient in culpable driving offences in New South Wales. Yet in more serious criminal offences the involvement of alcohol is not always considered so seriously. Alcohol consumption is not perceived as an ingredient of the offence. It can in fact contribute to a defence and as an integral element of diminished responsibility, sometimes resulting in a reduction of sentence in some cases.

There is a need to confront this paradox and to recognise the principle that alcohol is a central ingredient in offences other than drink driving and to expand the principle of individual responsibility for alcohol affected behaviour to other offences.

The High Court of Australia in O'Connor (1979) supported a defence in some circumstances in crimes of violence. The O'Connor defence is not often successfully pleaded. However it arguably has effect on the decisions of police when investigating and charging, prosecutors when making case assessments and prosecuting, the defence in offering explanation for criminal behaviour, and courts in mitigation of sentence.

Daly, (1978) discussing the difficulties presented to the credibility of our legal system by allowing an intoxication defence commented:
....the criminal law is seen as failing in its purpose if it succumbs under pressure of judicial and evidential difficulties and allows a self-intoxicated man who acts in an anti-social way to go free or suffer a lesser punishment when it would condemn, or condemn more severely, the conduct on the part of a sober man.

A number of approaches to intoxication have been taken in other jurisdictions.

**United Kingdom**

**Butler Committee (UK):**
In England the Butler Committee (1975) recommended creation of a specific offence of "dangerous intoxication". Where a jury finds that intoxication showed that an offender did not have sufficient intent, but, the offender did commit the act, he/she could be convicted of an offence of dangerous intoxication.

**The Public Order Act 1986**
The British Public Order Act 1986 (s6) provides an intoxication defence for its offence of summary riot. It requires a person attempting to use intoxication defence to show that the intoxication "... was not self induced or that it was caused by the taking or administration of a substance in the course of medical treatment".

**West Germany**
The West German Criminal Code s330 creates an offence of "deliberate and careless intoxication". The section is reproduced below.

330a (1) A person who deliberately or carelessly gets himself/herself into a state of acute intoxication through alcoholic drinks or other intoxicating substances shall be sentenced to imprisonment of up to five years or a fine, if in the state of intoxication he commits an act contrary to law and cannot be condemned because he was, as a result of the state of acute intoxication, not capable of legal guilt or because this lack of capacity cannot be excluded.

**An Australian Example**
The Northern Territory is alone in Australian jurisdictions in providing for top up sentences where intoxication is a factor in violence offences. The Northern Territory
Criminal Code (s154) allows for top up penalty in crimes of violence involving intoxication.

Adoption of similar approaches would help redress the present imbalance between the role of alcohol in drink driving and its central but as yet unrecognised role in other criminal offences. It would introduce a responsibility on the individual for his/her alcohol use when it leads to the commission of an offence.

**Dram Shop or Server Liability Legislation**

Homel and colleagues (1991a,b) have identified intoxication as a significant contributing factor in violence in and around licensed premises. Liability legislation or as it is more commonly known in North America and Canada, "Dram Shop Liability or Server Legislation", has been significant in influencing servers to implement responsible serving practices.

Dram Shop Liability Legislation is presently unknown to the Australian legal system. In many parts of the United States and Canada, a body of statute and common law liability operates under the rubric Dram Shop Liability Legislation. The form of this body of provisions ranges from specific statute law provisions which aid claims under codified negligence provisions or create additional common law causes of action to developed common law causes of action for negligence. Negligence under Dram Shop Liability Legislation has been applied to bar and tavern owners, managers and staff, employers\(^4\) conducting staff parties, producers of alcoholic beverages and in some circumstances to social hosts\(^5\). Damages awarded to persons suffering injury or damage have been significant, in some circumstances amounting to millions of dollars. The legislation provides "... a remedy for a person injured by an inebriated [person] against the person who caused the inebriated [person] to become intoxicated (Rodriguez-Schak and colleagues 1988)".

It should not, however, be thought that these are novel legislative provisions, for Dram Shop Liability Legislation has a long and chequered history. Some of the Acts date from the 1800's with the first being passed in Wisconsin in 1849 and a second in Indiana in 1853 and followed by Ohio and Pennsylvania in 1854, New York in 1857 and Maine in 1858. By 1870, 11 States had Dram Shop legislation in place

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\(^4\) Where an employer aided an obviously intoxicated driver into a motor vehicle following a drinking to intoxication at a staff party organised by the employer on the employer's premises.

\(^5\) Where a social host aided an obviously intoxicated driver into a motor vehicle following a drinking to intoxication at a party organised by the host on the host's premises.
The legislation, both developed common law negligence and specific provision, currently applies in some twenty States in the United States. The legislation, may create a special status for persons seeking to establish a connection between supply of alcohol to a juvenile or a person who is intoxicated or merely to extend the general principles of the tort of negligence. One of the most comprehensive statutes is that in the State of Maine, where the Statute's purpose is stated clearly "... to prevent intoxication related injuries, deaths and other injuries" (Goldberg 1987). The Illinois Dram Shop Act provides: "... every person who is injured in person or in property by an intoxicated person has right of action .... against any person who by selling or giving alcoholic liquor, causes the intoxication of such person"(anon 1986).

The courts in some States have seen fit to extend the application of Dram Shop liability to include "Social Host" liability. Hosts, and employers acting as hosts, have been found liable under Dram Shop or extended common law negligence for the subsequent action of inebriated persons and juveniles supplied with liquor (Illinois Revised Statutes, ch 43, s 135). Generally, it is the developed law of negligence that has been applied to "social host" negligence situations.

Dram Shop liability legislation had its origins in the legislative response to the temperance movement in the United States in the mid to late 1800's. It has undergone a resurgence under the influence of such groups as Mothers Against Drunk Drivers (M.A.D.D). Such groups have been concerned about the damage and injury caused by drivers of motor vehicles under the influence of alcohol.

One feature of the recent resurgence of interest in Dram Shop liability legislation has been dramatic changes in work practices within the liquor industry and in the level of professionalism exercised by employees, license holders and owners of licensed premises, and perhaps most importantly by producers of alcoholic liquor. Creation of liability for producers offers perhaps the most likelihood of quick change. The stimulus of liability under Dram Shop legislation or extended common law negligence has been a very powerful engine for change in North America and has driven introduction of training programs such as alcohol serving and management programs. One such training program (Police Chief 1989) "Techniques of Alcohol Management" was founded in Michigan in 1983 and through an eight hour education program for bar and restaurant owners, employers and employees, seeks to increase knowledge of:

the clinical effects of alcohol on the body;
how to recognise the physical signs and stages of intoxication; how to moderate a customer's drinking rate; and how to deal with problem drinkers.

The Michigan Techniques of Alcohol Management Course is broadly not similar to responsible serving guidelines introduced jointly by the National Campaign Against Drug Abuse and the Nation Alcoholic Beverage Industry Council representing the industry. To date the guidelines while strongly supported by the various industry associations have received less than enthusiastic support from the industry at the grassroots level. In short there has ben little change at the point of sale or supply.

One of the major attractions of a Dram Shop Liability Legislation approach is its self enforcing nature. Its enforcement is not reliant on all too busy police or other regulation agencies. As the provisions expose servers, producers and others, to civil liability, they must take strategies to reduce this liability. It is a straight commercial risk management situation - take action to reduce liability or expose the business or individual to large negligence payouts. Insurance would of course become expensive and cover difficult to obtain for establishments without approved training. Limitation of liability has been achieved in North America by introduction of strict house policies on the serving of persons to intoxication, service of intoxicated persons and juveniles and most importantly, staff training in responsible serving techniques.

Dram Shop or Server Liability could develop at any time in Australia from the general actions for negligence. All the elements are in place. What is required is a specific failure of an individual to perform a duty of care or statutory duty eg service of an intoxicated person accompanied by injury or death.

There are provisions in the liquor acts of each of the Australian States prohibiting the presence or serving of intoxicated persons. In the case of the New South Wales Liquor Act6 there is a reverse onus provision applied to a licensee once intoxication on licensed premises has been established the onus shifts to the licensee to establish efforts and actions were taken to prevent intoxication. There have been few prosecutions for this offence in any of the States.

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6 Similar provisions are to be inserted in the New South Wales Registered Clubs Act.
Vicarious liability of employers for the unlawful actions of employees is presently enshrined in the Liquor Control legislation of all States. Dram Shop Liability could be viewed as merely an extension of this principle outside licensed premises. In addition, licensees are already responsible for events occurring outside their premises - quiet and good order provisions of the NSW Liquor Act (s104) (and 17AA of the Registered Clubs Act) where a licensee could be disciplined or license cancelled due to offences, noise, intoxication, violence and vandalism occurring in and around a licensed premise.

**Situational Factors in Alcohol Related Violence**

Homel and colleagues (1991a,b) have commented on the contribution of situational factors to alcohol related violence. There is a significant role for the industry in dealing with identified dangerous practices such as:

- overcrowding;
- poor air conditioning;
- lack of adequate seating;
- lack of bar counter space;
- aggressive bouncers; and
- cheap drinks and promotions that encourage high levels of intoxication.

**Conclusion**

The New South Wales Police Service has developed a strategic approach to alcohol related violence, crime and anti-social behaviour. The approach is one that recognises that policing action concentrated on licensed premises has little likelihood of success. Included in the approach is a commitment to communicating the problems associated with alcohol to the community, working with other agencies, the industry and the community in a comprehensive approach.

Alcohol problems are not new. Solutions, particularly cooperative and interagency strategies, such have been forged with drink driving in Australia, offer significant prospect for success.
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