

Guidelines for Conducting Controlled Purchase Operations

Disclaimer

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Introduction

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

Who are these guidelines for?

The Guidelines are a tool for regulatory agencies, licensees and duty managers. They are not intended to be a prescriptive blueprint, but rather guidelines for action that can be adopted or amended to suit agencies' and communities' particular circumstances and requirements.

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

These Guidelines aim to help ensure operations are robust, defensible, supported by best practices and nationally consistent. For agencies that have not run CPOs and have been considering them, the Guidelines provide valuable detail on how to introduce them and work with other agencies to achieve success.

CPO Participants

The Sale and Supply of Alcohol Act 2012 establishes a duty for the police, medical officers of Health and Alcohol Licensing Inspectors to:

- establish and maintain arrangements to monitor licences and enforce the act
- work together to develop and implement strategies for the reduction of alcohol-related harm (Section 295 - Duty to Collaborate).

CPOs are highly successful partnerships that combine the strengths and expertise of police, Alcohol Licensing Inspectors, and health agency staff. They have also hinged on using well-trained and credible under-18 volunteers.

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.

The police

The police have consistently supported CPOs as a key strategy to increase public safety and reduce alcohol-related harm.

The police have an important role in setting up, developing and ensuring the success of CPOs. They have specific powers and expertise in matters of law, collecting and handling evidence, and prosecution.

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

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, SSAA. Thus, the police are an essential partner in jointly run CPOs.

Other roles for the 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 CPOs 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 CPOs
- initiating action in ARLA or the District Court.

Alcohol Licensing Inspectors

Alcohol Licensing Inspectors or council licensing staff can contribute to CPOs in several ways, such as in:

- publishing the likelihood of CPOs as one method of monitoring in the area
- producing newsletters and/or letters to give notice to all premises of the enforcement action that can follow any CPO
- compiling a list of premises to be visited and the criteria for selection (such as previous complaints over sales to minors that have caused concern)
- funding aspects of the operation (eg, capital for purchases, volunteer costs, etc)
- helping as 'in-store' witnesses to verify or corroborate volunteer evidence
- submitting an application to ARLA seeking an order
- completing follow-up actions with licensed premises in the area.

Alcohol Licensing Inspectors can initiate enforcement action before ARLA. Collaboration or consultation with the police is always recommended for District Court prosecutions.

Health agency staff

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

- on behalf of the Medical Officer of Health
- within the broader brief of reducing alcohol-related harm.

To ensure ongoing participation, health agencies could consider formalising their CPO involvement within their funding agreements or service contracts.

Health promoters and Health Protection Officers can contribute to CPOs in several ways, such as by:

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

Recruiting suitable CPO Volunteers

CPOs and resulting prosecutions depend on having 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 colleagues or people in personal or business networks
- local secondary schools
- SADD (Students Against Dangerous Driving), which operates throughout New Zealand
- other youth organisations.

The volunteer's age

CPO volunteers should be 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, ie, look and act their age. During the CPO, they should dress in their normal clothes and avoid appearing older than they are. Make-up, including lip gloss, should be avoided, as should male volunteers with facial hair, as this could cast doubt on the integrity of the operation. Avoid hats, beanies, caps or other clothing that can 'disguise' volunteers' features. The volunteer should also act fairly and not go to elaborate lengths to make a purchase.

At any 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 s.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 PH 299-300/2003).

Previous purchasing

Establish whether the volunteer has previously purchased alcohol illegally and consider the implications of their having to give an affirmative answer to this question in court. As well as feeling uncomfortable, the volunteer could be portrayed as 'experienced in deceit' or a 'regular customer', which may compromise a successful prosecution.

The volunteer's availability

The volunteer must be dependable, and available at suitable times. CPOs 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, regardless of the CPO outcome. The voucher must not be used as an incentive to buy alcohol successfully.

The type of voucher and its value are to 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/whānau.

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/whānau
- 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, written confirmation of parental consent should be obtained before the volunteer undertakes their first CPO (see Appendix 10)
- volunteers can be called by summons to give their evidence and prove their age, removing the requirement for copies of birth certificates in advance under disclosure.

It is also a good idea to take the additional precaution of requesting name suppression. Volunteers and their parent(s)/caregiver(s) must also be advised to report any adverse incidents or contacts to the CPO organiser or the police. It has previously been accepted 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:

- make sure they are always 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-licensed 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 (see Appendix 2) 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 Controlled Purchase Operations – Information for Parents and Volunteers (Appendix 1)
- 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 (Appendix 3) (note that 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, eg, "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 Form (Appendix 5). They will need to be familiar with them if they complete a successful purchase.

Case law

- Some case law referred to in this document relates to the Sale of Liquor Act 1989. While the principles contained in the case law remain relevant, note that future decisions made by the new Alcohol Regulatory and Licensing Authority (ARLA) may change or supersede existing case law.

Volunteers telling the truth about their age

A High Court appeal in 2005 reinforced that CPOs are a fair test of licensees' 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 because of concerns that the minor involved lied about her age. The Liquor Licensing Authority held that, while an offence (the sale of alcohol to a minor) had been committed, it would be counterproductive 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 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 CPOs are a fair test for licensees and not some kind of entrapment. It also reinforces that it is acceptable for volunteer minors, when questioned about their age, to falsely state that they are 18 years old.

While it is preferable to present the licensee with the most 'real' scenario, ie, the volunteers lie about their age if asked, individual agencies have the discretion to decide whether 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.

To avoid doubt, if the volunteer is asked for a proof of age document, they must be truthful and say they are not carrying one.

CPOS

A Step by step Guide

The following step-by-step guide describes how to undertake a CPO. Please make sure you have read the preceding material first. See Appendix 8 for CPO checklist.

The four key components of a CPO are:

- 1.** Pre-operation planning
- 2.** equipment
- 3.** final breifing
- 4.** visiting licensed premises

1. Pre-operation planning

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

- the agencies that will participate (police (essential), Alcohol 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
- whether licensed premises and staff will be alerted in some way before the CPO. This is not essential for a successful prosecution but was deemed ‘fair’ by the previous Liquor Licensing Authority. As CPOs are now a widely acknowledged part of compliance activities, it is no longer considered 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 type of premises)
- 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.

You will need to determine:

- who will take enforcement action – the police or the Alcohol Licensing Inspector
- what enforcement action needs to be taken in respect of the seller, the manager, the licensee, or a combination of these
 - the judicial forum to be used – either prosecution in the District Court or application to ARLA
 - the contingencies for appealed decisions (considering factors such as costs and representation).

Consider seeking reliable advice on the most up-to-date CPO methods and recent court rulings or decisions.

It is desirable to keep some formal record of the decisions made on the points outlined above. This may take the form of a formal or an informal operation order. If things do go wrong, or if there are questions around the integrity of the operation, a written record of the decisions made is an important reference point. From a police point of view, best practice is a formal operation order outlining all points considered above.

2. Equipment

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, SSAA. At least one police officer must be involved in every CPO. Licensing Inspectors and public health officers are often also involved.

You will need:

- one CPO supervisor to direct proceedings
- a minimum of two adults per car (including the CPO supervisor)
- one staff member assigned to observe the operation, as good practice.

Volunteers

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

Note: Where two volunteers enter licensed premises and attempt to purchase alcohol, only ONE of the volunteers must select and purchase the alcohol.

Alternating between volunteers when ‘testing’ licensed premises can reduce an individual volunteer’s follow-up work and time in court. To test compliance, there is no need to send consecutive volunteers into licensed premises, or 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 (CA178/02)* and *New Zealand Police and others (CA179/02)*.

Hardware

- 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 street map.
- A camera to photograph volunteers. Police specialist photographic equipment may also be used.
- A tape measure to measure the volunteers’ height.
- Money for alcohol purchases – allow \$20 for each premises. Break the total fund down to \$20 notes, as any change given becomes evidence.
- Money for food or other incidentals.
- Communications equipment (phones, police radio), notebook and pens.
- Labelled self-sealing exhibit bags that 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 CPOs on on-licensed premises).
- Your identification – not the volunteers’ (unless the volunteers have been asked to provide appropriate documentation).

Software

A supply of the following forms (copies are included in the Appendices of these Guidelines):

- Volunteer Controlled Purchase Operation Notes Form (Appendix 5)
- Licensed Premises Visit Summary Form (Appendix 4).

3. Final briefing

Conduct a final briefing about an hour before setting out. This is your last chance to check and double-check that your plan is sound and participants are prepared, and understand their roles and safety procedures.

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 volunteers – their observations recorded on the form will be crucial to a successful prosecution. Consider conducting a ‘test run’ in licensed premises where there is no attempt to purchase. This could fine-tune the volunteers’ observation skills. See ‘Visiting licensed premises’ below for more detail.
- Double-check that volunteers are not carrying identification.
- Discuss the alcohol product the volunteers will select. Products preferred by younger drinkers are most suitable. Set a spending limit compatible with the money to be issued.
- Confirm the volunteers’ required response if asked their age (eg, to offer their date of birth and let the seller work out their age, or to immediately tell the truth).
- Make sure each volunteer is appropriately presented and meets the standards described above in ‘The volunteer’s look and demeanour’.

- 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 care by the CPO organiser.

Measure the volunteer's height with and without footwear – twice to ensure accuracy. Record the details on a separate sheet, along with the name of who measured the volunteer. It is advisable to use the same person who took the volunteer photographs to measure and record the volunteer's height.

4. Visiting licensed premises

Consider starting the CPO with a 'test run' to ease the volunteer into the task.

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 briefly observe one person selling alcohol.
- Once back in the car, get them to complete the Volunteer Controlled Purchase Operation Notes Form (Appendix 5) 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.

The operation

Now it is time for the 'real thing'.

- 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).
- If the premises are on-licensed, send an observer into the premises separately from the volunteer. In this case, there should be no contact between either party unless there is an emergency.
- 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.
- Note the time the volunteer enters and exits the premises.
- Record the details of each licensed premises visited on the Licensed Premises Visit Summary Form (Appendix 4). Where possible, note the displayed name of the duty manager.
- When the volunteer returns, complete the **Licensed Premises Visit Summary Form**.
- 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.
- If a sale was made, ask the volunteer to complete the **Volunteer Controlled Purchase Operation Notes Form** (Appendix 5) immediately – help or prompt them as required as they record their observations. Check that the form has been completed correctly.
- Secure the documentation appropriately.
- Interview the licensee/operator and staff immediately after the sale to clearly identify who made the sale. This interview must be completed in compliance with all evidential requirements. Arrange a follow-up meeting with the licensee for a time within the next two working days.
- Move on to the next premises and repeat the process.

Where a sale is made

- 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 it is a statutory requirement for the name of the duty manager to be displayed, it could be absent or inaccurate.
- Follow police protocols in handling and securing evidence. If unsure, seek advice.
- Remember, the police and/or the Alcohol Licensing Inspector have the right to seize without warrant any alcohol purchased from licensed premises (section 268 – *Power to seize samples of alcohol*, SSAA). 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 CPOs have used a pre-positioned CPO worker to witness events surrounding a sale. While this is not necessary for successful prosecution, the presence of an adult worker is recommended in CPOs in on-licensed premises, mainly for volunteer safety. Make appropriate arrangements for the volunteer's safe return at the end of the CPO. Stick to arranged timeframes or 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, Alcohol Licensing Inspector or health agency representative) must already be on the premises and be able to view the volunteers at all times. Note that an Alcohol Licensing Inspector is now able to be used as an observer, as the SSAA does not require the Alcohol Licensing Inspector to identify themselves immediately when they enter licensed premises (the Sale of Liquor Act 1989 did).

- If the volunteers fail to purchase alcohol, they are to leave the premises straight away and meet their supervisors at a predetermined point.
- If the volunteers successfully purchase alcohol, they are to approach their observer immediately and hand over the alcohol, along with any change and receipt they may have. Once they have done this, the volunteers are to leave the premises and meet their supervisors at a predetermined place.
- 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 is to be secured following normal police protocols for handling and securing evidence, eg, secured and sealed in an appropriate container (the alcohol is to be retained in case the potential defendant disputes that the alcohol contains more than 1.15% alcohol by volume within 20 working days before any hearing, section 273 – *Matters of proof relating to content of alcohol*, SSAA).

Debrief of volunteers

- Consideration should be given to undertaking 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. Note that experience has shown that officers working on a CPO with volunteers are usually soliciting feedback from the volunteers throughout the course of the CPO and that this gathering of feedback often replaces the need for a more formal debriefing.

CPO Follow-up

– What next?

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

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

1. Publicity and community action

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

Some communities have used CPOs as a catalyst for initiating change in the community. In one community (Westport) the agencies running the CPO decided to use a form of public community diversion, rather than prosecuting licensed premises through the previous Liquor Licensing Authority or the District Court. The Westport case study is in Appendix 9.

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 CPOs, media follow-up (both locally and nationally) should always be considered – whether or not sales were made. Consider advising all licensed premises tested during the CPO of their results.

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'.

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

2. 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. We must work closely with licensees and their staff in a multi-layered, integrated approach.

A case in point

For example, in one area 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 Liquor

Licensing Authority, the operators of these premises had strenuously argued that they had comprehensively reviewed and improved their staff training and control systems.

Licensing staff working in the area observed that, in relation to:

- training and control systems – they appeared to have moved from their 'on alert' status and seemed to rely 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, 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 premises that didn't sell on the second CPO had established comprehensive staff training, employment provisions, control systems and staff monitoring systems. They also involved local licensing staff in their systems review – ensuring a 'best practice' approach to improving their compliance regime.

Other initiatives from the premises included:

- enabling all staff to attend sessions with police and health agency staff and to acquire information on best practice in ID scrutiny, an overview of the then Sale of Liquor Act 1989'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. This allows management to compare operator performance across all checkouts and detect and act on anomalies daily
- developing a 'test purchase' protocol to test operator compliance regularly
- positioning highly visible signage next to checkouts and stock, advising customers (and staff) of the under-25 ID protocol
- giving checkout operators 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 may not be effective on its own. A multi-layered approach such as that described above should provide better protection to licensees and their staff.

However, all staff should be encouraged to complete HPA's Host Responsibility online training. The training covers all aspects of host responsibility and provides staff with the knowledge and skills to properly manage the sale of alcohol and comply with the legal obligations of the Act. It also has a strong focus on best practice for age ID of customers.

The training can be completed at: servewise.alcohol.org.nz

Licensees could also be encouraged to use their data more effectively and 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– 229/2002, also *Waitakere Licensing Trust and Herataka* PH 1501-15-5 2008).

3. Negotiated suspensions by consent

Negotiating suspensions allows flexibility and helps obtain timely, positive outcomes. It avoids the need for ARLA 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 certificates*, SSAA applications to ARLA.

Issues to consider:

- ensure unanimous agreement is reached among all partner agencies
- look at the ARLA Penalty Guidelines for Enforcement Officers, 26 October, 2016 (Appendix 6)
- check if the 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:

- do nothing, and have the matter placed before ARLA for a full hearing, with all evidence being presented
- agree to the circumstances, ie, that a sale to a minor took place. Written or oral submissions can then be placed before ARLA for its determination
- make a full agreed settlement, for confirmation by ARLA.

A sample form for negotiated suspensions is included in Appendix 7.

Note that:

- ALL negotiated suspensions MUST be notified to ARLA for consideration and determination
- the full agreed option should be reserved only for first time offenders
- any subsequent breaches must at least have ARLA determine the course of action.

4. Enforcement action/prosecutions**The following are key points in CPO prosecutions:**

- only ARLA and the District Court deal with CPO offences under the SSAA
- ARLA is the appropriate (and ultimate) forum for taking enforcement action against licensees and managers (ie, holders of manager's certificates)
- the District Court is the only forum for prosecuting a seller who is not a licensee or manager
- either the police or Alcohol Licensing Inspectors can initiate ARLA enforcement action against licensees or managers. There is no requirement to put licensees or managers before the District Court prior to an ARLA hearing
- either the police or Alcohol 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 Alcohol Licensing Inspectors
- decisions on whether cases should be prosecuted via ARLA or the District Court should be carefully considered – prosecutors are recommended to consult other agencies before proceeding. Reviewing ARLA, High Court and Appeal Court decisions should form part of this review before proceeding.

Prosecutions through the district court

District Court action must be taken within six months of the offence and is initiated with a summons to the

defendant. The cases follow normal court procedures, with decisions based on proof beyond a reasonable doubt. Offenders who are found guilty receive convictions for each offence.

District Court prosecutions can be taken against:

- the licensee or manager of any licensed premises who sells or supplies any alcohol, 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), SSAA)
- 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), SSAA).

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 ARLA of any convictions of licensees or general manager's certificate holders (section 278 – *Notice of prosecution or conviction of managers and licensees*, SSAA). This notification does not automatically initiate a hearing before ARLA – that 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*, SSAA.

It is worth noting that SSAA 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 section 239 – *Sale or supply of alcohol to people under purchase age on or from licensed premises* subsections (1) and (2), SSAA.

Section 281 – *Suspension or cancellation of licences by licensing authority in respect of certain offences*, SSAA prescribes an explicit requirement for the police to refer convictions to ARLA, but has no clear statutory prescription should the Alcohol Licensing Inspector (or people who are not members of the police) prosecute. Alcohol 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 the police is strongly advised.

Enforcement action through ARLA

The authoritative Court of Appeal judgment *Christchurch District Licensing Agency Inspector v Karara Holdings Limited* (CA178/02) affirmed the 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 managers' certificates*.

These sections gave the police and Alcohol Licensing Inspectors the power to make applications in relation to licences and manager's 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 Liquor Licensing Authority, and subsequently ARLA, required a standard of proof 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), SSAA give the grounds that most apply to sales to minors, ie, 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 usually 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 undertaken 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 CPOs?
- 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 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.

Appendix 1

Controlled purchase operations – information for parents and volunteers

The following outline of the process will help you understand the purpose and format of the Controlled Purchase Operation (CPO).

What is a Controlled Purchase Operation?

A CPO is an important tool used by enforcement agencies to gauge and reduce the extent of the illegal direct supply of alcohol to underage people.

In simple terms, enforcement agency staff, an under-18 volunteer and other licensing workers make up a patrol that visits pre-selected licensed premises. Under police supervision, the volunteer attempts to purchase alcohol at these premises. The results of the operation are recorded and followed up at a later date. They may result in offending premises or staff being warned, or prosecuted before the District Court or ARLA, or both.

Alcohol in New Zealand

Alcohol is a part of contemporary Aotearoa New Zealand society. It is a legal, regulated and widely available product and most adults drink at least occasionally. For many, alcohol is a symbol of hospitality and is used to celebrate important events in people's lives.

Alcohol-related harm

When alcohol is misused, the damage can be considerable. It may include physical and mental health problems, injury and death on the roads, drowning, violence, foetal abnormalities, and absenteeism and impaired work performance.

Although overall alcohol consumption in New Zealand is relatively static, product sales appealing to the 'youth market' have grown exponentially, as has the incidence of alcohol-related harm among young people.

It is estimated that around 30% of all incidents attended by police are alcohol-related. Violence is by far the biggest problem. Alcohol-related violence takes many forms:

- assaults and homicides
- suicides
- intentional damage
- family violence
- road traffic crashes
- sexual assault.

The role of the CPO in reducing alcohol-related harm

Numerous strategies or 'tools' are used to reduce alcohol-related harm:

- Harm minimisation strategies – these target drinking behaviour and settings and aim to promote safer drinking or service practices. Community development and education, social marketing, role modelling and other similar long-term initiatives fall into this category.
- Law enforcement – CPOs fall into this category. Before CPOs were introduced in 2000, the extent of alcohol sales to minors was difficult to quantify. Early CPOs began to show how easy and common it actually was. CPOs have a direct impact on reducing alcohol-related harm among young people. Detecting and prosecuting licensed premises or staff that sell to minors is an effective and economical short-term prevention strategy. When CPOs are repeated at regular intervals, overall compliance improves through creating the perception that detection and prosecution are likely.

What do we want to achieve?

- Reduce young people's access to alcohol by making it harder to get.
- Make those who sell alcohol illegally more accountable.
- Increase the perception of the risk of detection.

- Reduce alcohol-related crime, especially among young people.
- Reduce the incidence of alcohol-related harm among young people.

Issues to consider

- The volunteer and their parent(s) and/or caregiver(s) should want to be part of the programme and participate with full knowledge and approval. The volunteer should be a dependable, community-minded individual, interested in reducing alcohol-related harm among young people.
- The volunteer must act fairly and give an accurate and honest account of CPO purchases.
- Volunteers aged from 15 to 17 years are ideal. The volunteer must look their age and not dress to try to look older. The CPO organiser will elaborate on this.
- The volunteer must be able to cope with retailers refusing to sell or admonishing them for attempting to purchase alcohol under age. No sale is a good result.
- The volunteer must be dependable and available at suitable times. The CPO organiser will need to be informed of upcoming exams or other important commitments that may affect the timing of the CPO or resulting court events.
- In the case of a prosecution, and if the matter is defended, the volunteer may be required to give evidence in court – this may mean some time off school.
- In the event of a defended prosecution, the defence is entitled to all documents relating to an investigation. Care is taken to protect the identity of volunteers. CPO documents provided under disclosure contain minimal personal information. Name suppression is also sought.
- The parent(s) and/or caregiver(s) of the volunteer must give informed consent. A certified copy of the volunteer's birth certificate may be required. Occasionally, an affidavit confirming birth date is used.

- Payment should not be the reason for undertaking the CPO. However, in recognition of the volunteer's time and effort a gift voucher is presented at the conclusion of the CPO, regardless of the outcome.
- Often during or after the CPO a meal is provided. Please advise the CPO organiser of any special dietary requirements or restrictions.
- All reasonable steps will be taken to keep the volunteer safe during the CPO.
- Confidentiality is important. Parent(s) and/or caregiver(s) and volunteers should not discuss the CPO schedule with anyone who is not involved in the CPO. We advise volunteers to be careful about who they tell before and after a CPO.

The CPO organiser will be in contact with you to discuss any questions or concerns you may have. We appreciate your interest and respect your right to reconsider participation.

Appendix 2

Information sheet - working with volunteers

Initial discussion with prospective volunteers should cover the following:

- The volunteer should understand why the CPO is being conducted (a way of monitoring or improving the compliance of licensed premises, reducing harm, etc). The volunteer should want to be part of the operation – not pressured in any way.
- The need for confidentiality before and after the CPO should be emphasised.
- The volunteer must know to act fairly and not go to elaborate lengths to make a purchase – overconfidence should be carefully moderated. The use of any make-up (including lip gloss) is to be avoided and volunteers must not dress to look older than they are. Volunteers must not carry any identification during a CPO.
- The volunteer must be able to cope with retailers admonishing them.
- The volunteer must be available at a suitable time. Keep regular contact with them before the CPO to ensure a smooth process and no last-minute surprises.
- Let them know that in the case of a defended prosecution the volunteer may be required to give evidence in court – this may mean time off school.
- Discuss issues surrounding disclosure and the measures taken to protect identities.
- At a later time, volunteers will need to:
 - produce a certified copy of their birth certificate
 - get consent from their parent(s) and/or caregiver(s) and give their own consent
 - complete the Volunteer Briefing and Acknowledgement Form.
- Payment should not be the reason for undertaking the CPO – a gift by way of a voucher may be provided to thank the volunteer for their time. Explain to the volunteer that offering a gift voucher is in no way an incentive to make a successful alcohol purchase.
- Outline the procedure for the CPO. Preview the Volunteer Controlled Purchase Operation Notes Form with the volunteer. Emphasise the importance of making good observations in order to identify the person who sold the alcohol and other relevant details required to prove a sale.
- Explain the importance of exhibits – alcohol, change and transaction receipts are all exhibits, so need to be secured and handled with care.

Appendix 3

Volunteer briefing and acknowledgement form

(To be completed prior to the commencement of the Controlled Purchase Operation)

Thank you for your interest in being involved in the CPO. You have already been verbally briefed about what happens during a CPO and the role of the under-18 volunteer. You have also read Controlled Purchase Operations – Information for Parents and Volunteers.

Please read the following information and feel free to ask any questions if it is unclear.

- At each visit you will be issued with cash to purchase alcohol. If you are sold alcohol, remember to take it with you when you leave the premises. If a transaction receipt is available, take it with you. As soon as you get back to the car you must hand over the alcohol to the CPO supervisor, along with the transaction receipt and any change from the transaction.
- During the CPO the person serving you may ask you how old you are. You should respond as discussed with your supervisor, eg, tell the person your date of birth so that they have to calculate your age. However, if pressed, be truthful and give your real age.
- You will be asked not to carry any identification on the CPO. If you are asked for your ID, you can say truthfully: "I don't have any identification on me."
- Under no circumstances must you carry false identification.
- You need to be very observant when purchasing so that you can accurately fill out the Volunteer Controlled Purchase Operation Notes Form when you return to the car. You must take very careful mental note of who sells you the alcohol, their appearance, and what was said. You are also required to note who else was there (staff, other customers, etc), the general layout of the premises, and other details.
- If you are asked who the alcohol is for, you must say that it is for you.

- If you are unsure of what to do at any stage, come back to the car immediately.
- If you are refused alcohol, be polite and leave the premises immediately.
- If you are asked personal questions that make you feel uncomfortable, you may leave the premises without giving any reply. In such circumstances you must return to your supervisor immediately.
- If asked who you are with, you can give the name of the CPO supervisor.

I have read and understand the information detailed above.

Volunteer first name:.....

Volunteer signature:

Controlled Purchase Operation supervisor:

.....

Date:.....

Appendix 4

Licensed premises visit summary form

(To be completed for each licensed premises at the time of the visit)

CPO supervisor name:									
Day of visit (circle):	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Date of visit:	
Volunteer first name:						Age:	Ethnicity:		
Witness name (where applicable):									
Time of visit (24 hr clock):	Premises type (circle): Supermarket Bottle store Bar Tavern Club Other								
Premises name:									
Premises address:									
Displayed duty manager's name:									
Did the retailer commit to selling alcohol to the volunteer?: Yes/No					Was a copy of the transaction receipt retained? Yes/No				
What was purchased?									
What was the price?			What was tendered?						
What change (if any) was returned?					Was the volunteer asked their age? Yes/No				
Was the volunteer asked for identification? Yes/No									
General comments about the Controlled Purchase Operation:									
Witness observations (where applicable):									

Duty manager's name:

General observations (description of seller, what was said, what was seen, etc):

General observations (description of seller, what was said, what was seen, etc):

Appendix 5

Volunteer controlled purchase operation notes form

(To be completed by the volunteer immediately after purchasing alcohol)

Volunteer information

Volunteer first name:		Date of birth:	Age:
Ethnicity:	Country of birth:		Height (centimetres):
Photo taken Facial: Yes/No		Full length: Yes/No	
Volunteer briefed by:			Date briefed:
Parent(s)/Caregiver(s) briefed by:			Date briefed:
Informed consent obtained: Yes/No		Date consent obtained:	
Volunteer birth certificate sighted or age otherwise verified: Yes/No/Pending			

Licensed premises information

Premises type (circle):	Supermarket	Bottle store	Bar	Tavern	Club	Other
Premises name:						
Premises address:						
Premises description:						

Internal premises sketch (draw a rough layout of the licensed premises, location of entrance and exit, drinks service area in bar/tavern, checkout, fridge, etc)

Description of seller

Gender:	Approximate age:	Ethnicity (if unsure write 'unknown'):
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(Circle the appropriate information below)

Height	Tall	Short	Medium	Unknown			
Build	Thin	Medium	Heavy	Unknown			
Eyes	Blue	Brown	Green	Black	Hazel	Unknown	
Hair Type	Straight	Wavy	Curly	Bald	Other	Unknown	
Hair Colour	Brown	Black	Blond	Ginger	Grey	Other	Unknown
Hair Style	Short	Long	Collar length	Other	Unknown		
Facial Hair	Yes/No	Moustache	Beard	Unknown			

Other distinguishing features (spectacles, tattoos, accent, jewellery, name badge, etc) :

Description of seller's clothes (colour, type, etc):

Checkout number or details (eg, express lane) if licensed premises is a supermarket:

Were other people working in the licensed premises? **Yes/No**

Description:

Purchase details

Time of purchase:	Day:	Date:
Type of alcohol (beer, wine, RTD, etc):	Product brand:	
Number of units purchased:	Type of containers (bottles, cans, etc):	
Size of containers (millilitres):	Cost of purchase:	What money was tendered?
What change was returned?		
Alcohol and receipt given to:		Time:

Circumstances (In your own words, write exactly what happened when you went into the licensed premises or bar. Where was the alcohol kept, did you see signage relating to minors, were other customers in the licensed premises, what did you buy, how much was it, were you asked your age or for ID, exactly what was said and by whom, was a receipt issued, who did you give the alcohol to when you came out of the licensed premises, anything else that you noticed?)

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Volunteer signature:

Checked by:

Appendix 6

Alcohol Regulatory and Licensing Authority penalty guidelines for enforcement officers

Issued by the Alcohol Regulatory and Licensing Authority on 26 October 2016

Introduction

- [1] The Authority's first penalty guidelines were introduced in about 2004. Those guidelines have served the Authority and enforcement officers well but with the commencement of the Sale and Supply of Alcohol Act 2012, an update to the guidelines, reflecting the object of the Sale and Supply of Alcohol Act 2012, is desirable.
- [2] Once it has been established that the grounds for an application for suspension of a licence or manager's certificate are made out, and that it is desirable that a suspension order be made, the most difficult task faced by the Authority is to assess a period of suspension which is both reasonable and reflective of the misconduct (*Police v Karara Holdings Limited NZLLA PH 800/2003* refers).
- [3] The introduction of the Sale and Supply of Alcohol Act 2012 brought significant changes to the regime relating to the sale and supply of alcohol in that while the object of the 1989 Act was the reduction of liquor abuse the object of the 2012 Act requires that the sale, supply, and consumption of alcohol should be undertaken safely and responsibly to achieve minimisation of the harm caused by the excessive or inappropriate consumption of alcohol.
- [4] On that basis the Authority has resolved to update its penalty guidelines to reflect this shift. As in the past, where the parties seek to negotiate outcomes that might be acceptable to the Authority, it is desirable that the Authority indicates what periods of suspension it considers might be reasonable given aspects of the misconduct in question.

Guidance from previous cases

- [5] With the passage of time, some principles can be gleaned from previous decisions of the Authority and the Courts, which are considered by the Authority when assessing a period of suspension. These include:
- Suspensions may need to deter other licensees from similar misconduct (per *Mill Liquorsave Ltd v Grant David Verner Wellington High Court CIV-2003-485-874*).
 - Licensed premises that sell liquor only can be distinguished from premises where the sale of liquor is an ancillary service in that a suspension in the former case will mean the premises will close (as pointed out in *Christchurch District Licensing Agency Inspector v Karara Holdings Ltd and ors (CA178/02)*).

Aggravating factors

- Where there is actual liquor abuse then the sanction will be greater. If there is clear managerial irresponsibility that will be reflected in the period of suspension (per *Karara*).

Mitigating factors

- Efforts made to ensure no repetition of conduct which led to the suspension will be taken into account (*Karara* again).
- [6] The Authority, in the exercise of its discretion, continues to adhere to the principle that the imposition of a penalty will vary according to the nature of the activity undertaken in each instance. Against that backdrop, however, where an offence can be described as unexceptional the Authority anticipates that the guidelines listed below will be the commonly accepted 'norms' for first breaches (per *Payne v General Distributors Limited [2016] NZARLA PH 76-77*). In the case of on-licences a distinction is

drawn based on the extent to which the income of the premises in question is derived from the sale of alcohol:

Licences

- i. On- licences (taverns) or premises which rely solely on the sale of alcohol for income – 48 hours suspension.
- ii. On-licensed premises other than taverns (i.e. hotels, restaurants, conveyances, or any other on-licensed businesses that do not rely solely on the sale of alcohol for their income) – 72 hours suspension.
- iii. Off-licences for stand-alone liquor retail premises or bottle stores – 48 hours suspension
- iv. Off-licences (supermarkets) – five days suspension.
- v. Off-licences (grocery stores) – seven days suspension

Managers' certificates

- vi. First failure in a Controlled Purchase Operation – 28 days' suspension
- vii. First conviction for excess blood/breath alcohol – 28 days' suspension

It is emphasised that the sanctions in i-vi above are confined to failed Controlled Purchase Operations and are to be applied to **first offences only**

Holdings

- [7] As a means to achieving its object, the current Act provides that in some instances where a term of suspension is imposed by the Authority on a licence or a manager's certificate, a holding pursuant to s 289 (licence) or s 290 (manager's certificate) will be

recorded against that licensee or manager which, if repeated twice more within a three-year time frame will place the licence or certificate in jeopardy.

Given the “three strikes” provisions of ss 288 to 290 of the Act the Authority will expect that second or subsequent breaches will be heard by way of a public hearing.

Scheduling suspensions

[8] Where the Authority is satisfied that both the facts and grounds have been agreed it will most commonly impose sanctions within a period of approximately four to six weeks following the date of issue of the decision. Respondents should be made aware that unless there are compelling reasons to persuade the Authority to do otherwise, suspensions for any period greater than 24 hours will be scheduled to apply on consecutive days and any suspension will be imposed on, or will include, the day of the week upon which the grounds in support of the incident occurred.

[9] There have been occasions when enforcement officers, having secured agreement from the respondents upon terms of suspension, have purported to fix the dates upon which the penalties will take place. That is not their function (see decision *Police v W Reeves & D J Williams* [2013] NZARLA 854-855, paragraph [6]). Scheduling of penalties is the sole prerogative of ARLA, although the Authority may consider submissions from a respondent if supported with reasons.

[10] In the exercise of its functions the Authority retains the option of setting down any matters for hearing, despite a request for determination on the papers, where the Authority considers this is warranted in the circumstances of the case.

Appendix 7

Sample negotiated suspension form

Manager's certificate negotiated suspension (Sale and Supply of Alcohol Act 2012, section 285 – Suspension or cancellation of manager's certificates)

CONSENT TO SUSPENSION OF AN ON-LICENCE

My full name is «Name».

I am the licensee for«Business_Name» in respect of premises situated at «Address» trading as«Trading_As».

I have the authority to represent«Business_Name», which is the holder of on-licence number «Number», in respect of the premises situated at «Address».

I am aware of the police application for suspension of the licence in regard to the sale of alcohol to a minor on «Date».

We do not wish to contest or dispute the grounds of the application and do not wish the matter to proceed to a public hearing.

I am aware the police application and the “consent to suspension of on-licence” will be forwarded for approval to the Alcohol Regulatory and Licensing Authority and if approved will result in a public decision.

I assert that this is the first time we have failed such an operation and sold alcohol to a minor.

On that basis we consent to suspension of the on-licence for a period of «Penalty» days.

Signed: Date:
(for Respondent)

Signed: Date:
Sergeant <<Name>> (for Applicant)

Appendix 8

Checklist for controlled purchase operations

Recruit volunteers

Source

Selection criteria:

- Age between 15 and 17
- Look and demeanour
- Dress standards
- Any previous history
- Availability

Compensation

Information:

- About CPO
- Parent/caregiver consent
- Volunteer consent

Volunteer safety

Safety issues

Protection of identity

Pre-operation planning

Participating agencies:

- Must include police
- Health
- Alcohol Licensing Inspector
- Recommend all

Determine responsibilities:

- Meal during CPO
- Cash
- Gift

Tactics:

- Immediate follow-up of failure
- Which agency takes what action post-CPO
- Prosecution
- Publicity
- Number of premises and who to visit
- Truth about age or lie:
 - Discuss offering date of birth to begin with, then truth if pressed

Equipment:

- Office for volunteer and pre-CPO briefing
- Vehicles
- Money
- Camera
- Forms and information sheets
- Evidence kits

Final briefing:

- Confirm CPO information with volunteers
- Consider need for test run
- Check volunteer has no ID
- Discuss what alcohol volunteer will try and purchase
- Discuss telling truth about age
- Check look and demeanour
- Take two photos – headshot and full length
- Check parental/caregiver and volunteer consent has been given

Visit premises

Test run?

Start CPO:

- Set rendezvous point at each premises
- Check additional requirements for on-licences:
 - Two volunteers
 - Observer in premises (enter first)
 - Volunteers in view at all times

When sale not made:

- Volunteer to exit premises immediately

When sale made:

- Volunteer to exit premises immediately
- Hand evidence to CPO supervisor:
 - Purchased alcohol
 - Receipt (if any)
 - Remaining money (change)
- Interview seller and manager/licensee immediately
- Organise follow-up interviews with licensee within next two working days

Debrief of volunteers

- Formally or informally throughout CPO

Follow-up action

No sale:

- Media release?
- Acknowledgement letter to licensees?

Sale:

- Media release?
- Work with licensees and their staff to improve performance and avoid further transgressions
- Negotiated suspension by consent?
- Prosecution?
- District Court
- Alcohol Regulatory and Licensing Authority

Review and evaluate operation

- Debrief with participating agencies

Appendix 9

Follow-up case study

Westport controlled purchase operation, 17 May 2003

As part of the Westport Youth Access to Alcohol (YATA) campaign, a Controlled Purchase Operation (CPO) was conducted in Westport on Saturday 17 May 2003

Those directly involved in the CPO were the Westport Youth Aid Officer, a Community and Public Health Liquor Licensing Officer and a 16-year-old volunteer.

The operation itself involved the volunteer visiting and attempting to purchase alcohol at three off-licences in the early evening and a further eight on-licences between the hours of approximately 9pm and midnight.

As a result of the 11 visits, seven sales were made, with two of these being at one premises that held both an off- and on-licence.

In the week following the CPO, informal discussions were held between the main members of the YATA group (including representatives from the police, Buller Safer Community Council, Buller District Licensing Agency and the Hospitality Association of New Zealand).

The main purpose of the discussions was to come up with the best method of responding to the disappointingly high number of sales that were made to the 16-year-old volunteer in a way that would be most beneficial to the local community as a whole.

It was agreed that in this instance a form of diversion for the premises that sold would be the best overall solution. Unanimous agreement was gained between all parties concerned, including the licensees, and the following course of action was agreed at a formal meeting with all parties:

- A combined advertisement was to be placed in the local newspaper outlining the industry's concern and regret about the sales that were made during the CPO.
- The advertisement would be undersigned by each individual premises and include their commitment to questioning the age of any patrons who appeared to be under 25 years of age.
- A donation of \$500 was to be made by each of the offending premises to the local Youth Activity Programme, specifically to be used in running alcohol-free dance parties.

It was made very clear by the police, at the formal meeting of all those involved, that further CPOs would be conducted and any future sales to a minor would result in court prosecutions. This would be regardless of whether it was a first offence or not.

The police wrote to all licensees in Westport and surrounds giving them this information. In addition a licensees' newsletter was sent out. This made it clear that there are no more chances for any licensees, managers or bar staff. Individual follow-up letters stressing this point were sent by public health, Buller Safer Community Council and the District Licensing Agency.

Appendix 10

Parent/caregiver consent confirmation

.....
.....
.....

Date

Sergeant [CPO Organiser]

[Address]

To Whom It May Concern

Re: – **Controlled Purchase Operation assistance.**

My full name is

I am the parent/caregiver of..... whose date of birth is and I have been informed of the police operation that requests the assistance of my child.

I have been advised of the process of the operation, and given the opportunity to view the operation orders that relate to this.

I have also been advised that I may be present in the vicinity of the operation, and that my child may object and leave at any time.

I have no objections to my child assisting the police with this.

Yours sincerely

Health Promotion Agency

Freephone: 0508 258 258

Email: enquiries@hpa.org.nz

To order resources visit alcohol.org.nz

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