



**NSW ACT Alcohol Policy Alliance's
Submission to:
The statutory review of the *NSW Liquor Act 2007*
and the *Gaming and Liquor Administration Act 2007***

August 2013

About the NSW ACT Alcohol Policy Alliance

The NSW ACT Alcohol Policy Alliance (NAAPA) aims to reduce alcohol-related harms by ensuring that evidence-based solutions inform alcohol policy discussions in NSW and ACT. NAAPA currently has 41 member organisations from a range of fields including health, community, law enforcement, emergency services and research.

The following are the NSW members of NAAPA:

- The Foundation for Alcohol Research and Education
- Network of Alcohol and Drug Agencies
- Darlinghurst Resident Action Group
- Newcastle Community Drug Action Team
- Police Association of NSW
- Australian Medical Association NSW
- The Royal Australasian College of Surgeons
- Public Health Association of Australia NSW Branch
- Cancer Council NSW
- National Drug and Alcohol Research Centre
- Centre for Health Initiatives - University of Wollongong
- Australasian College of Emergency Medicine
- Jewish House Limited
- Inspire Foundation
- The Asia Pacific Centre for Crime Prevention Griffith University (Sydney)
- University of Newcastle
- Ulladulla Community Drug Action Team
- Drug and Alcohol Research and Training Australia
- Bondi Residents Association
- Ted Noffs Foundation
- St Vincent Hospital
- Australian Drug Foundation
- Health Services Union
- Pedestrian Council of Australia
- Salvation Army NSW
- Awabakal Newcastle Aboriginal Co Operative Ltd
- The Royal Australasian College of Physicians
- Hello Sunday Morning
- Byron Bay Youth Service
- Law Enforcement Against Prohibition
- NSW Nurses and Midwives Association
- 2011 Residents' Association
- Bondi Beach Precinct



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Recommendations

1. Make licensing processes more timely and reduce the burden on community stakeholders, by introducing standard time frames for decision-making by the Independent Liquor and Gaming Authority (ILGA) and the Office of Liquor Gaming and Racing (OLGR) within the *Liquor Act 2007*, including a maximum of:
 - seven days to notify objectors and complainants that the authorities have received their objections or complaints;
 - 30 days to notify stakeholders of the authorities' action regarding objections or complaints; and
 - 90 days to resolve objections and complaints.
2. Allow decision-making bodies to apply lessons from individual licensing decisions to precincts by:
 - Appropriately resourcing ILGA and OLGR to conduct independent investigations where harms data and complaint volumes in a locality indicate the need for a broader response to alcohol-related harms and other issues; and
 - Amending the *Liquor Act 2007* to empower ILGA with the jurisdiction OLGR currently possesses to make proactive precinct wide decisions.
3. Make the responsibility for regulating liquor licensing independent of industry interests by removing liquor licensing regulation from the Department of Trade and Investment and relocating the licensing authorities within an independent office that more directly connects liquor licensing with, and facilitates input from, policing, family and community services, health, justice, land and planning, and local government.
4. Amend the Objects of the *Liquor Act 2007* to elevate harm minimisation to be the sole primary Object of the Act alongside the interests of communities; and subordinate all other Objects.
5. Introduce saturation zones in areas of NSW that are identified as having too many licensed premises and/or too many associated alcohol-related problems. Within these zones a moratorium should be placed on all new licences and in the interim, the operation of current freeze precincts should be extended beyond their current expiry dates.
6. Reduce trading hours for all new and existing liquor licences to the following:
 - All existing 24 hour liquor licences should be abolished and the current policy of not granting new 24 hour licences should remain in place;
 - Opening times for all licensed premises (including packaged licences) across NSW should be no earlier than 10.00am;
 - Standard closing times for all on-licence premises across NSW from Monday to Saturday should be midnight, with extended trading venues limited to 3.00am and lockouts (preventing entry for patrons) no later than 1.00am. Standard closing time for Sundays should remain at 10.00pm;
 - Closing times for packaged licensed premises across NSW should be no later than 10pm; and

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- Existing licensees should be given no more than one year to incorporate these changes to their businesses.
7. Subject small bars to the same rules and regulations as other licence types. This includes restrictions on trading hours, licence conditions, liquor freeze precincts and Community Impact Statement (CIS) policies. Current exemptions for small bars should be removed from the *Liquor Act 2007*.
 8. Strengthen secondary supply laws and the community awareness of these laws by:
 - Amending the *Liquor Act 2007* to incorporate irresponsible supply laws which prohibit the unsafe provision of alcohol (e.g. excessive amounts) or the inadequate supervision of the minor's alcohol consumption;
 - Requiring adults to obtain written permission from a minor's parents or guardians consenting to the supply of alcohol to their child by the adult in question; and
 - Developing a comprehensive public education campaign that informs the general public of the laws surrounding the supply of alcohol to minors and the associated risks with underage alcohol consumption.
 9. Introduce a risk based licensing fee system that, as a minimum, offsets the cost of alcohol-related harm borne by Government and the community. Criteria established for the development of the scheme should be based on, as a minimum, the duration of trading hours and crowd capacity.
 10. Introduce a process for the annual renewal of liquor licenses, with licensees who fail to submit their renewal having their licence revoked. This process should be tied to the annual risk-based licensing fee.
 11. Strengthen the *Liquor Act 2007* to prohibit the harmful discounting and promotion of alcohol products by including within the *Liquor Regulations 2008* provisions relating to prohibited liquor promotions, and ensure that these are adequately enforced. These should address both on- and off-licence premises with equal weight.
 12. Introduce a minimum price for alcohol at one dollar per standard drink, with alcohol not being permitted to be sold for less than this price.
 13. Introduce a policy that prohibits alcohol promotions from being placed on state and local government property.
 14. Strengthen the responsible service of alcohol by:
 - Strengthening enforcement measures throughout NSW, including Compliance Officers visiting licensed premises outside of regular business hours;
 - Introducing mandatory RSA-related licence conditions for all new and existing on-premises licensed venues in NSW, including alcoholic drink restrictions (i.e. sale of 'shots', mixed beverages with more than 30mL of alcohol, ready-to-drink beverages with more than five per cent alcohol volume, beverage quantity limitations and time limitations on their sale) and additional RSA actions (i.e. RSA marshals, no drink stockpiling by patrons, ceasing sale and supply of alcohol 30 minutes before closing time);
 - Enhancing the transparency of RSA compliance by requiring OLGR and the NSW Police to publicly report on compliance activities relating to the *Liquor Act 2007*, the number of

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- venues inspected and their location, the times of day that these venues are inspected and the number of identified breaches of compliance; and
- Extending enforcement powers to provide local government employees with the ability to enforce RSA provisions under the *Liquor Act 2007*.
15. Enable police and regulatory authorities to penalise irresponsible alcohol servers and retailers by legalising controlled purchase operations for identifying and prosecuting licensees found to be selling alcohol to people aged under 18 years.
 16. Amend the *Liquor Act 2007* to include mandatory collection and public reporting of alcohol sales data and data on liquor licensees' occupancy, trading hours and compliance with the liquor legislation.
 17. The collection of alcohol-related data should be extended to include other types of data such as:
 - Alcohol-related emergency department presentation;
 - Alcohol-related ambulance attendances;
 - Alcohol-related criminal justice data; and
 - Alcohol-related community services data.
 18. Improve public awareness, engagement and input in licensing matters by:
 - Amending CIS forms to require all licence applicants to:
 - Publish notices of their licence application in local newspapers;
 - Write to the owners and occupiers of nearby community buildings, facilities and places that may be sensitive to a new licenced premises (i.e. hospitals, places of worship, educational institutions, facilities for vulnerable persons, alcohol-free zones, public parks and sporting grounds), notifying them of the licence application and of their rights to make submissions to ILGA;
 - Sufficiently resource ILGA to independently review, assess and follow up with CIS stakeholders as to whether they were contacted by applicants in relation to licence applications, and whether they have any objections to the application in question. A lack of a response should not be considered to be assent to a licence application;
 - Abolish the 'Category A' and 'Category B' CIS system, replacing it with a standard CIS form based on the present 'Category A' CIS and revised stakeholder notification provisions;
 - Enhancing the availability and accessibility of information regarding licence applications by:
 - Implementing a notification system for new licence applications that members of the public and authorities can sign up to receive;
 - Developing more 'user-friendly' websites for OLGR and ILGA that makes tracking new licence applications and licence approvals easier for the general public.
 - Extend the timeframes for communities to respond to new licence application from 30 days to 60 days.
 19. Improve communities ability to participate in objection processes by ensuring that alleviate:

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- The burden of proof that currently rests on objectors is reduced by providing ILGA with sufficient resources to cross-reference applicants' CIS with harms data from government agencies and to investigate objections; and
 - The burden of proof that currently rests on objectors by delivering more 'user-friendly' information (e.g. fact sheets and information links to local alcohol-related data) for objectors to refer to through ILGA and OLGR's websites.

20. Improve communities ability to participate in compliance processes by:

- Providing for members of the general public to submit complaints on grounds detailed in Part 9 of the *Liquor Act 2007*; and
- Expanding the capacity of ILGA to investigate complaints against licensees in order to reverse or reduce the burden of proof that rests on complainants; and
- Deliver more information on where to direct complaints and how to submit complaints through OLGR and ILGA's web-sites, local government offices, and community legal centres.



1. Introduction

The NSW ACT Alcohol Policy Alliance (NAAPA) welcomes the opportunity to provide a submission to the Review of the *Liquor Act 2007* (the Act) and the *Gaming and Liquor Administration Act 2007*. This review provides the New South Wales (NSW) Government with an opportunity to reform liquor licensing and prioritise evidence-based policies that are proven to reduce alcohol-related harms.

The significant levels of alcohol-related harms and the large number of people in NSW who continue to consume alcohol at risky levels demonstrate that the current regulatory and legislative framework is failing to adequately prevent alcohol-related harms in NSW.

The harms associated with alcohol use in NSW are significant. The latest available statistics show that in 2011-12 there were 50,950 alcohol-related hospitalisations.¹ In the same year, there were 14,518 alcohol-related non-domestic assaults, and 10,079 alcohol-related domestic assaults.²

The 2010 National Drug Strategy Household Survey found that 36.6 per cent residents in NSW aged 14 years and over consumed alcohol at levels that placed them at risk of an alcohol-related injury from a single occasion of drinking (more than four standard drinks per occasion).³ Furthermore, 18.6 per cent of the NSW population aged 14 years and over consumed alcohol at levels that placed them at lifetime health risks (more than two standard drinks a day).⁴

The recent Auditor General's report into the cost of alcohol to the NSW Government found that each year Government is spending \$1.029 billion on alcohol abuse, while the total social costs of alcohol are \$3.87 billion per year, or \$1,565 per household.⁵

Community members of NSW are well aware of the impact of alcohol on the community and are calling on the Government to take meaningful action to reduce harms. FARE's *2012 Annual Alcohol Poll* NSW data demonstrated that an overwhelming majority of people in NSW (80 per cent) believe that Australia has a problem with alcohol, and 77 per cent believe that more needs to be done to address alcohol-related harms.

It is well established that the increased availability, excessive promotion and lower price of alcohol all contribute to increased alcohol consumption and harms. Despite this, alcohol is more available than it has ever been in NSW with 17,010 liquor licenses⁶, alcohol promotions are prolific with an average of 30.2 point of sale promotions per liquor outlet in NSW⁷ and alcohol can be purchased for as little as 22 cents per standard drink.⁸

This Review presents significant opportunities for the NSW Government to reform the way in which alcohol is regulated and to reduce the harms that impact so significantly on the lives of people of NSW. Reforms to the regulation of alcohol must be comprehensive and must acknowledge that the current system of regulation is not adequately mitigating the harms that so frequently result from alcohol on people that consume alcohol and those around them. These reforms must begin with:

- Removing the policy responsibility of liquor licensing regulation from the industry focused portfolio of the Department of Trade and Investment;
- Introducing annual risk-based liquor licence fees for liquor licensees to ensure that they are contributing to the substantial costs of regulating, policing and preventing alcohol-related harms in NSW;

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- Abolishing 24 hour trading and extending the mandatory closing period for licensed venues to seven hours for all existing and new liquor licensees;
 - Addressing the reckless discounting of alcohol by banning the sale of alcohol for less than one dollar per standard drink in on- and off-premise venues;
 - Elevating harm minimisation as the sole primary Object of the Act and ensuring consideration is given to the importance of reducing alcohol-related harm under all sections of the Act; and
 - Reforming the Community Impact Statement (CIS) scheme to give greater responsibility to licensees and regulators in proving and assessing the social impact that a licence will have on a community.

These reforms and those included within this submission are proven solutions to reduce alcohol-related harms. The NSW Government should use this Review as an opportunity to introduce these policies and demonstrate that they are committed to reducing alcohol-related harms.

About the submission

This submission outlines the key areas of concern of NAAPA and should be read in conjunction with the Explanatory Paper prepared by the Office of Liquor, Gaming and Regulation (OLGR). The numbering adopted within this submission reflects that used in the Explanatory Paper.



2. Structure of the liquor regulatory framework

Regulation refers to the extensive variety of legally enforceable instruments which impose mandatory requirements upon business and the community.⁹ Effective regulation is the outcome of detailed policy development and thorough regulator design process.¹⁰

A regulatory framework for alcohol should be consistent with general principles and guidelines for regulatory best practice. The Council of Australian Governments (COAG) and the NSW Government have both developed principles and guidelines to best practice regulation. For example, the COAG document, *A guide for ministerial councils and national standard setting bodies*¹¹ provides principles for regulation as guidance to establish and maintain effective arrangements for all levels of governments. These principles include “Adopting the option that generates the greatest net benefit for the community” and “Consulting effectively with affected key stakeholders at all stages of the regulatory cycle.”¹²

The current regulatory system in NSW is complex. The functions of liquor regulation are divided between the Office of Liquor, Gaming and Racing (OLGR) and the Independent Liquor and Gaming Authority (ILGA). OLGR is responsible for compliance in liquor licensing matters and the provision of overall policy direction and advice to the NSW Government on liquor licensing. OLGR reports to the Director General of the NSW Department of Trade and Investment. The Director General has the power to: impose, vary or revoke liquor license conditions; impose lock-outs; restrict or prohibit the sale of certain alcoholic products; and, restrict or prohibit the “undesirable promotion” of alcohol.

ILGA is responsible for determining: applications for liquor and gaming licences; applications for review; and disciplinary complaints against participants in the liquor and gaming industry.¹³ The NSW Police also have a role and are able to prosecute breaches of the Act.

Principles for effective liquor licensing regulation

To improve the regulation of liquor licensing in NSW, three principles for more effective regulation have been identified:

1. Processes should be facilitative, timely and reduce the burden on community stakeholders;
2. Decision-making bodies should be allowed to apply lessons from individual licensing decisions to precincts; and
3. Responsibility for regulating liquor licensing should be independent of industry interests.



1. Processes should be facilitative, timely and reduce the burden on community stakeholders

The NSW Guide to Better Regulation directs policy-makers to implement “well designed and properly targeted regulation... [to] deliver the community’s economic, social and environmental goals.”¹⁴ There is the need for the timely treatment of licensee compliance issues and to ensure that licensing decisions are consistent. Processes should also minimise the burden of engagement placed on these community stakeholders.

Current policy

Members of the public who wish to make a submission in relation to a licence application must do so within 30 days of the date on which the application was made. However, there are no specified time limitations in the Act or Regulations for applicants or licensee responses to objections or complaints, nor are there specified time limitations for decision-making by ILGA or OLGR. This can sometimes result in drawn-out processes for dealing with new licence applications, disturbance complaints or complaints about promotions.

Future directions

Belated interventions hinder actions to minimise alcohol-related harms and pose a barrier to engagement by community members, alcohol and other drug (AOD) public interest organisations, policing and health sectors. This in turn compromises the function of liquor regulation in the public interest. For example, the NSW Police Local Area Commander in Wollongong lodged a disturbance complaint in December 2009 in relation to 11 licensed premises; however it took more than 18 months for a final decision to be made.

These extended timeframes can also be seen in the time taken to address complaints regarding liquor promotions. For example a complaint submitted to OLGR by FARE in May 2013 regarding concern over a promotion which offered bottles of wine to be purchased for less than two dollars per bottle has not yet been finalised and no timeframes have been provided to FARE despite repeated requests.

Time limitations should be placed on decision-making by regulatory authorities, to ensure that responses to reported harms contained in application objections and licensee complaints are time-efficient and swift without compromising due process for all stakeholders. This serves to ensure that regulatory processes are responsive to the problem at hand while being at the same time reducing the burden stakeholder engagement in application objections or licence complaints.

Recommendation

1. Make licensing processes more timely and reduce the burden on community stakeholders, by introducing standard time frames for decision-making by the Independent Liquor and Gaming Authority (ILGA) and the Office of Liquor Gaming and Racing (OLGR) within the *Liquor Act 2007*, including a maximum of:

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- seven days to notify objectors and complainants that the authorities have received their objections or complaints;
 - 30 days to notify stakeholders of the authorities' action regarding objections or complaints; and
 - 90 days to resolve objections and complaints.

2. Allow decision-making bodies to apply lessons from individual licensing decisions to precincts

Implementation of standardised and consistent licensing policies across a locality is more effective in reducing alcohol-related harms than imposition of conditions on a case-by-case basis. The trading hour policies imposed on the 'entertainment precincts' in the City of Newcastle in 2008 were in direct response to the alcohol-related harms reported in complaint submissions to licensing authorities. The Newcastle policies demonstrated the effectiveness of locality-wide licensing conditions in reducing alcohol-related harms due to late night trading.

Current policy

Decision-making by ILGA takes place on a premises-by-premises basis. OLGR follows a similar principle but also has the jurisdiction to consider several licensed premises in relation to a disturbance complaint under section 79 of the Act.

ILGA and OLGR have the jurisdiction to conduct investigations into particular licensing matters. Data on the incidence of alcohol-related harms within Local Government Areas is collected by BOCSAR and NSW Health. This data is a form of evidence that can be taken into account by OLGR and ILGA considering a licence application, application objections, licence complaints and applications for decision review.

Future directions

Action to minimise harms across a locality in a consistent manner are rare and vulnerable to legal challenge by the local liquor and related industries.¹⁵ Locality-wide action should be undertaken by authorities more freely particularly when policies have been proven to be effective in reducing harms within another locality.

Licensing Authorities should proactively respond to harms data with locality-wide policies. Independent investigations into the contribution of licensed premises to alcohol-related harms in a community should take place where alcohol-related harms data from Bureau of Crime Statistics and Research (BOCSAR) and NSW Health pin-point localities experiencing high incidence levels of harms. Locality-wide policies for future licence approvals should also be reviewed and, where appropriate, up-dated biannually in response to harms data. Complaints submitted to authorities should also provoke independent investigations by OLGR. Imposition of locality-wide licence conditions should be available where multiple discrete complaints are submitted to authorities concerning at least two premises within the same locality and within a 12-month period.

ILGA should have the same capacity that OLGR currently possesses to impose precinct-wide licence conditions, which broadens its capacity to intervene in licensing matters with a view to



minimising harms within a community. Where the complaint relates to disciplinary action under Part 9 of the Act (these are grounds on which members of the public cannot initiate a complaint), ILGA should have the capacity to consider precinct-wide licence conditions where multiple premises are implicated in the complaint and where harms data shows high incidence rates of alcohol-related harms within the locality.

Recommendation

2. Allow decision-making bodies to apply lessons from individual licensing decisions to precincts by:
 - Appropriately resourcing ILGA and OLGR to conduct independent investigations where harms data and complaint volumes in a locality indicate the need for a broader response to alcohol-related harms and other issues; and
 - Amending the *Liquor Act 2007* to empower ILGA with the jurisdiction OLGR currently possesses to make proactive precinct wide decisions.

3. Responsibility for regulating liquor licensing should be independent of industry interests

Effective regulation of alcohol requires input from a variety of sectors and stakeholders. Liquor licensing matters intersect policing, family and community services, health, justice, land and planning, local government and business interests.

Current policy

The regulation of the liquor trade and licensing matters by OLGR and ILGA currently sits within the NSW Department of Trade and Investment. Reviews of licensing decisions are undertaken by the licensing decision-making body, ILGA.

Future directions

With the overall responsibility of liquor regulation sitting within the Department of Trade and Investment, this creates a clear conflict of interest. This is concerning as the interests and priorities of business and industry are priority issues for the Department of Trade and Investment. Yet, alcohol regulation goes beyond business interests. Relocating the licensing authority to an office outside of the Department of Trade and Investment would enable liquor regulation to be more connected with, and receive input from, all government departments that are relevant to alcohol policy (i.e. policing, family and community services, health, justice, land and planning, and local government.). This in turn would serve to make the operations and decisions of licensing authorities more responsive to community interests as per the Objects of the Act.

It is clear from the current corporate structure and the titles of staff within OLGR that industry is the main focus of liquor regulation. There are sections within OLGR titled 'Industry Support', 'Strategic Engagement and Development Branch'. This clearly demonstrates the focus on industry in the policy development of liquor regulation. An example of this is the consultation



that occurred with the alcohol industry in reviewing and updating the Liquor Promotion Guidelines.

Recommendation

3. Make the responsibility for regulating liquor licensing independent of industry interests by removing liquor licensing regulation from the Department of Trade and Investment and relocating the licensing authorities within an independent office that more directly connects liquor licensing with, and facilitates input from, policing, family and community services, health, justice, land and planning, and local government.



3. Regulating market entry and business operations

This section contains recommendations that relate to the regulation of market entry and business operations. This includes harm minimisation, trading hours, outlet density, small bars, secondary supply, packaged liquor, licence fees and licence renewals.

Harm minimisation

Alcohol is not an ordinary commodity. It has been the subject of special regulations for centuries in light of its use and misuse contributing to an array of short and long term harms to the individual and community at large. Government has an obligation to protect its citizens against agents of harm, including alcohol, which can have wide-reaching, negative impacts on individuals and the community.¹⁶

The impacts of alcohol misuse are rarely limited to the drinkers themselves – many innocent people suffer due to someone else’s drinking.¹⁷ Therefore, control of aspects of the physical and social environment empirically demonstrated to contribute to alcohol-related harms should be subject to Government regulation.¹⁸ Australian Governments have adopted a harm minimisation approach to addressing alcohol policy and regulation. The Commonwealth Government has defined harm minimisation as aiming to “...address alcohol and other drug issues by reducing the harmful effects of alcohol and other drugs on individuals and society.”¹⁹ To protect the public from alcohol-related harms it is the role of all levels of governments to implement prevention and intervention measures.

The importance of harm minimisation was recognised in the NSW *Liquor Act 1982*. The previous version of the Liquor Act included harm minimisation as a primary Object of the Act. The Object stated that:

A primary object of this Act is liquor harm minimisation, that is, the minimisation of harm associated with misuse and abuse of liquor (such as harm arising from violence and other anti-social behaviour). The court, the Board, the Director, the Commissioner of Police and all other persons having functions under this Act are required to have due regard to the need for liquor harm minimisation when exercising functions under this Act. In particular, due regard is to be had to the need for liquor harm minimisation when considering for the purposes of this Act what is or is not in the public interest.

An example of how the object of harm minimisation can be applied and considered is seen in the case of *Kordister Pty Ltd v Director of Liquor Licensing* (*‘Kordister’*) in Victoria.²⁰ In 2009, an application for reducing trading hours of an off-licence venue was made by police and approved. However, the licensee requested a review this decision by the Victorian Civil and Administrative Tribunal (VCAT) and as a result of the appeal the decision to reduce trading hours was removed. The VCAT decision was appealed in the Supreme Court on the grounds that the decision was not upholding the Objects of the Act (harm minimisation). It was argued that VCAT had misinterpreted the request, which was to consider if ceasing late night trading would have contributed to harm minimisation rather than the removing of harm altogether. The Supreme



Court found that the decision made by the VCAT was not in line with the principle of harm minimisation, and the decision by the VCAT failed to uphold the primary objects of the Act.

This case in Victoria provides a clear example of the importance of harm minimisation as the primary Object of the Act, as all decisions made under the Act must give regard to principle of harm minimisation.

Current policy

Currently the Act does not include harm minimisation as an Object. The Objects of the Act are as follows:

- a) To regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community,
- b) to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,
- c) to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.²¹

Harm minimisation is included merely as a requirement to secure the Objects of the Act, with particular regard to:

- a) The need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),
- b) The need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor, and
- c) The need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.²²

Future directions

The current Objects contain conflicts between the perceived interest of the community and those of liquor and related industries. This poses a challenge for decision makers when determining and reviewing liquor licencing decisions. Clarity is needed in the Objects of the Act to ensure that harm minimisation and community interests are prioritised.

Recommendation

4. Amend the Objects of the *Liquor Act 2007* to elevate harm minimisation to be the sole primary Object of the Act alongside the interests of communities; and subordinate all other Objects.

Outlet density

Research has consistently found an association between alcohol outlet density (i.e.the number of active liquor licences in an area) and negative alcohol-related outcomes such as assaults, adolescent drinking, domestic violence, drink driving, homicide, suicide, and child maltreatment.^{23 24 25}



Despite this, year-on-year, the number of liquor licences in NSW continues to grow because there is no acknowledgement by policy makers that the density of liquor outlets results in increased harms. In NSW, at 30 June 2013 there was a total of 17,010 liquor licences (excluding liquor permits),²⁶ or approximately one licence for every 332 people aged 18 years or above in the state.²⁷

This continued increase in liquor licences is a result of the inadequate regulation of the density of licensed outlets in NSW. This is most apparent in the City of Sydney where, as at October 2012 there were 2,268 licensed venues, of which 778 had extended trading authorisation, 286 could trade 24 hours a day and 665 could trade after midnight.²⁸

Current policy

The City of Sydney currently has a 'liquor licence freeze' in place for two precincts in the Sydney Local Government Area (LGA): Oxford Street Darlinghurst (until 24 December 2013) and Kings Cross (until 24 December 2015). Theoretically, this licence freeze prevents further liquor licences (both on- and off-licences) being granted in areas with high outlet density and associated alcohol-related problems. However, despite this freeze being in place, between 2011 and 2012, 63 new liquor licences were granted in the City of Sydney

In 2012, the NSW Government acknowledged that approaches to addressing the density of outlets should be examined and engaged the Allen Consulting Group to research the cumulative impact of licensed premises in NSW. As a result of this research, the Environment and Venue Assessment Tool (EVAT) has been developed. This tool is intended to provide a clear and consistent basis on which ILGA and OLGR can base their licensing decisions and is now being trialled in the City of Sydney and Newcastle.²⁹

The EVAT is seen by the NSW Government as the centrepiece in their approach to address outlet density in liquor licensing. However, there is no publicly available information as to the research and development behind the tool. This is problematic because the current trial of the tool will result in liquor licences being granted in perpetuity, despite there being no evidence that the tool will be effective in addressing cumulative impact.

Future directions

The EVAT cannot be seen as the panacea to address the density of liquor licences in NSW, as there is no evidence to support its effectiveness and little is known about the research supporting its development. The EVAT is a flawed check box approach that will not address the issue of outlet density and alcohol harms. Details outlined in a decision made by ILGA in July 2013, demonstrates the weaknesses in the EVAT trial in which the Director General approved extended trading hours for an on-licence premise following an assessment under the EVAT which found that there were 845 licenses premises within the applicants postcode.³⁰ The decision made by ILGA was not to approve the extended trading authorisation.

The NSW Government must introduce policies that address the density of liquor outlets. This includes extending the current liquor licensing freeze in the City of Sydney (due to expire 24 December 2013 in Oxford Street, Darlinghurst, and 24 December 2015 in Kings Cross) and introducing saturation zones.



Internationally, regulatory bodies have addressed the density of liquor outlets by introducing policies such as saturation zones (these exist in England and Wales) where limitations are imposed on the introduction of new licences in areas that already have a high density of existing licences. Operational saturation zones in the United Kingdom have been determined based on outlet density, crime data and domestic violence statistics.^{31 32} This approach should be adopted in NSW.

Recommendation

5. Introduce saturation zones in areas of NSW that are identified as having too many licensed premises and/or too many associated alcohol-related problems. Within these zones a moratorium should be placed on all new licences and in the interim, the operation of current freeze precincts should be extended beyond their current expiry dates.

Trading hours

Australian and international research has consistently demonstrated that extended trading hours for licensed premises are associated with increased alcohol-related harms, including that the:³³

- Liberalisation of trading hours in Australia has been associated with a number of alcohol-related harms, including road traffic crashes and assaults;³⁴
- Limitations on the earliest time alcohol (or certain types of alcohol) can be sold by both on- and off-premise is associated with decreases in alcohol-related assaults, ambulance call-outs and emergency department presentations;³⁵
- Relaxation in licencing laws to allow 24 hours trading in the UK in 2005 was associated with a 25 per cent increase in serious violent offences committed in the early hours of the morning;³⁶ and
- For each one hour extension in on-premise alcohol sales in Norway, there was an additional 4.8 assaults per 100,000 inhabitants per quarter.³⁷

Studies have shown that assaults occur most frequently at licensed premises after midnight.^{38,39} Studies have shown that the incidence of alcohol-related assaults increase significantly between 6.00pm and 3.00am, with the highest rates of alcohol-related assaults occurring between midnight and 3.00am.⁴⁰ It has also been shown that over 40 per cent of assaults at licensed premises occur after midnight.⁴¹

Modest reductions in the trading hours of licensed venues can substantially reduce alcohol-related harms. This has most recently been demonstrated in Newcastle, where in 2008 the NSW Liquor Administrated Board introduced restrictions to 14 hotels, including a 3.00am close time and 1.00am lockout (which were later amended to 3.30am and 1.30am following a legal challenge by the licensed premises).

An evaluation carried out in the 12 months following the introduction of these restrictions found that there was a 37 per cent reduction in alcohol-related assaults when compared to a control site,⁴² with no geographic displacement to the nearest late-night district of Hamilton.⁴³ This reduction in alcohol-related assaults was not only sustained, but improved over time. A later study conducted three years after the licence restrictions were introduced found a 35 per cent reduction in night-time non-domestic assaults requiring police attention and a 50 per cent reduction in night-time street offences in the City of Newcastle.⁴⁴



Current policy

The standard trading hours in NSW are 5.00am to midnight (Monday to Saturday) and 10am to 10pm on Sunday. Small bars are an exception, with standard trading hours between 12pm and 2.00am. Extended trading hours permit venues to trade from midnight to 5.00am (Monday to Saturday) and 10.00pm to midnight on Sunday.

Due to an amendment made to the Act in 2008,⁴⁵ there is now a mandatory six hour closure period imposed on all liquor licences granted from 30 October 2008 onwards. This also includes licences existing prior to this date that are granted an extended trading authorisation on or after that date. While the Act prevents the granting of new 24-hour licences, existing 24-hour licences are able to continue trading for this time.

Future directions

Too many licensed premises in NSW trade in liquor for too many hours in the day. Reductions in trading hours are effective policy measures to reduce alcohol-related harms and should be introduced across the state. These reductions should be based upon the Newcastle experience.

Recommendations

6. Reduce trading hours for all new and existing liquor licences to the following:
 - All existing 24 hour liquor licences should be abolished and the current policy of not granting new 24 hour licences should remain in place;
 - Opening times for all licensed premises (including packaged licences) across NSW should be no earlier than 10am;
 - Standard closing times for all on-licence premises across NSW from Monday to Saturday should be midnight, with extended trading venues limited to 3.00am and lockouts (preventing entry for patrons) no later than 1.00am. Standard closing time for Sundays should remain at 10pm;
 - Closing times for packaged licensed premises across NSW should be no later than 10pm; and
 - Existing licensees should be given no more than one year to incorporate these changes to their businesses.

Small bars

The NSW Government is currently actively encouraging the uptake of this licence type by not subjecting Small Bar licence applicants to the same restrictions as other on-premises licence types (e.g. Hotel, Bar or Club licences). In NSW a small bar is defined as one that has a maximum of 60 patrons.

There is substantial evidence to demonstrate that the density of liquor outlets contributes to an increase in alcohol-related harms.^{46 47 48} There is no evidence to demonstrate that small bars do not contribute to this or that they have a different impact on a community in relation to alcohol-related harms.



Current policy

Under Division 3A of the Act, a small bar licence is subject to a condition that limits the capacity to 60 patrons. The current standard trading hours for a small bar is noon to 2.00am, with extended trading permissible from 10.00am to 5.00am.

Small bars are exempt from a number of conditions that are imposed on larger venues, namely:

- Small bars are exempt from the liquor freeze in Kings Cross and Oxford Street, Darlinghurst under section 47AA;
- Although in freeze precinct areas, the standard hours for small bars are between 12.00pm and 12.00am, they can apply to extend their hours anywhere between 10.00am and 5.00am. Other licence types in freeze areas are unable to extend their trading hours; and
- Under section 48, small bars are exempt from having to provide Community Impact Statements (CIS) to ILGA where development consent from the local council is required and notice of a development application is provided to local police and the Director General of NSW Trade & Investment within two working days.

Future directions

Regardless of their size, there is no evidence to support the exclusion of small bars from the licence requirements of other licensed venues. The exclusion of small bars from providing CIS with their application, or from being subject to the provisions in the Act and the Liquor Regulation 2008 that apply to other on-premises licence types is problematic because these bars contribute to the density of liquor outlets, which are associated with increased harms. Until strong evidence to demonstrate that small bars do not contribute to alcohol-related harms is made available, small bars should be subjected to the same requirements as other licensed premises.

Recommendation

7. Subject small bars to the same rules and regulations as other licence types. This includes restrictions on trading hours, licence conditions, liquor freeze precincts and Community Impact Statement (CIS) policies. Current exemptions for small bars should be removed from the *Liquor Act 2007*.

Secondary supply

Under-age drinking is associated with a wide range of harms including physical injury, risky sexual behaviour, adverse behavioural patterns and academic failure, as well as long-term physical and mental health conditions.^{49 50} In recognition of this, the National Health and Medical Research Council's (NHMRC) *Australian Guidelines on Reducing Health Risks from Alcohol Consumption* (the 'NHMRC Guidelines') recommend that for persons under the age of 18, not consuming alcohol is the safest option.⁵¹

According to a survey of Australian school students, almost three-quarters (74 per cent) of 12-17 year-old school students reported having ever consumed an alcoholic drink, with half (50.7 per cent) having done so in the previous year and 29.1 per cent having done so in the previous



month. Among recent drinkers (defined as students who drank during the week leading to the survey), almost one third (32.9 per cent) stated that the alcohol was supplied by their parents.⁵² The majority (64 per cent) of recent drinkers reported consuming their last alcoholic drink under adult supervision.⁵³ Despite this, there is evidence to suggest that even with adult supervision, students will still drink at risky levels (32.1 per cent in a WA school students' survey).⁵⁴

Current policy

Part 7 of the Act contains special provisions relating to minors (persons under 18 years). Offences relating to the sale or supply of liquor to minors are detailed in section 117 of the Act, with the exception to this being the provision of alcohol to minors by adults (i.e. parents or guardians, or adults with consent from the parent or guardian) in a private setting under section 117(4) of the Act.

Under section 117(5) of the Act, it is a defence against prosecution if proof is provided that the defendant was authorised to supply alcohol to the minor by the minor's parent or guardian.

Issues pertaining to NSW secondary supply laws are currently being considered in the *NSW Legislative Assembly Social Policy Committee: Inquiry into the Provision of Alcohol to Minors*.

Future directions

There are three key deficiencies in the secondary supply laws and their promotion in NSW. Firstly, they do not require safe and responsible supervision of alcohol consumption by minors. Irresponsible supply laws prohibiting the unsafe provision of alcohol (e.g. excessive amounts) or the inadequate supervision of a minor's alcohol consumption are currently in place in Queensland and Tasmania and need to be incorporated into NSW laws.

Secondly, the Act does not specify what constitutes parental authorisation for another adult to supply alcohol to their child under section 117(5). Authorisation should occur in the form of written consent. Requiring written consent will not only remove legal ambiguity but may also encourage dialogue between parties. This provision may encourage parents and guardians to more carefully consider their decision to provide alcohol to their child.

Thirdly, there is a lack of public awareness of the secondary supply laws in NSW. This was demonstrated in a study conducted by the University of Newcastle, which also showed that parents had little knowledge of guidelines regarding adolescent alcohol consumption, saying their decisions were based on their own values and discussions with friends, rather than external guidance.⁵⁵ A comprehensive public education campaign is needed to inform parents, guardians, alcohol servers and adults in general what their responsibilities are for minors under these laws, and what health and safety risks are associated with underage alcohol consumption.

Recommendations

8. Strengthen secondary supply laws and the community awareness of these laws by:
 - Amending the *Liquor Act 2007* to incorporate irresponsible supply laws which prohibit the unsafe provision of alcohol (e.g. excessive amounts) or the inadequate supervision of the minor's alcohol consumption;
 - Requiring adults to obtain written permission from a minor's parents or guardians consenting to the supply of alcohol to their child by the adult in question; and

- 
- Developing a comprehensive public education campaign that informs the general public of the laws surrounding the supply of alcohol to minors and the associated risks with underage alcohol consumption.

Licence fees

The recent Auditor General's report estimated that alcohol abuse costs the NSW Government \$1.029 billion per annum.⁵⁶ Alcohol abuse costs the NSW community in total \$3.7 billion per annum including costs to government services, as well as the social costs of alcohol abuse such as lost productivity in the workplace and home and costs of loss of life. One quarter of the total costs of alcohol abuse to the NSW community are criminal justice costs. The modest one-off licensing application fees currently paid by NSW liquor licensees do not even come close to recovering these substantial costs.

Current policy

In NSW liquor licensees do not have to pay ongoing licensing fees. Licensees pay a one off liquor licence application fee which is levied according to licence type, with the highest fee for a licence application being \$2,000 for a hotel licence (other than a general bar licence). An additional application fee is levied for extended trading beyond midnight, with the highest fee for a late trading authorisation being \$3,000 to trade between 2.00am and 5.00am.

Future directions

The current licence application fee system does not adequately reflect licence risk or the lifetime external costs incurred by government and communities from the operation of licenced premises. The NSW Government should adopt a risk based licensing fee (RBL) system to offset and recover the costs of alcohol use and misuse borne by Government and the community of alcohol-related harms.

RBL calculates and sets fees for licensed venues according to the level of harm associated with the venue depending on factors such as trading hours, occupancy, licence type and in some cases, compliance with liquor licensing legislation and whether they provide food. The aim of RBL is for liquor licensing fees to contribute to recovering the policing and regulatory costs associated with alcohol-related incidents. Higher risk venues contribute proportionally more to these costs than the lower risk ones, and so, under RBL, licensees pay fees commensurate with their likely risk of alcohol-related harms.

Queensland, Victoria and the Australian Capital Territory (ACT) have implemented risk-based licensing (RBL) schemes. The factors used to calculate and set fees in each of these jurisdictions are outlined in the table below. In addition, indicative annual fees for different license types, occupancies and trading hours for the ACT and Victoria are included in the second table below.

	Victoria (introduced August 2009)	Queensland (Introduced January 2009)	ACT (Introduced December 2010)
Trading hours	✓	✓	✓
Occupancy	✓	✓	✓
Past conduct/ compliance	✓	✓	
Licence type			✓
Volume sold (off-trade)		✓	✓
Provision of meals		✓	

As illustrated in the table below, in Victoria, Queensland and the ACT, RBL fees are highest for on-trade licensed nightclubs trading until 5.00am with maximum occupancy. In Victoria, additional fees are not levied for extended trading hours for night clubs, so the licensing fees for a restaurant trading until 5.00am in Victoria is much less than in the ACT. Victoria also has lower fees for “club” licenses than for bar licenses, while in the ACT the licensing fees for on-trade bars and clubs are the same. In both states, on-trade licensed night clubs trading until 3.00am at the lowest occupancy pay more annually than their NSW counterparts pay in one-off fees even at maximum occupancy (\$4,336 and \$5,625 per annum for Victoria and ACT respectively compared to \$3,000 for NSW). Furthermore, on-trade licensed night clubs trading until 5.00am at maximal occupancy in Victoria and the ACT pay annual licensing fees that are respectively 10 and seven times more than their NSW counterparts pay in one-off fees.

In the ACT, the money recovered from RBL has been used to fund more alcohol prevention police that have been reported to contribute to a 17 per cent reduction in alcohol-related arrests, a six per cent reduction in alcohol-fuelled assaults and a 9.67 per cent decrease in the number of people taken into custody for being intoxicated from 2010 to 2011.⁵⁷ The indicative annual licensing fees for different license types in Victoria and the ACT, including occupancies and trading hours, are detailed in the table below.

Licence type	Victoria	ACT
On-trade licensed night club trading until 5.00am, with maximum occupancy.	\$31,435.20 per annum	\$23,365 per annum
On-trade licensed night club trading until 3.00am at lowest occupancy.	\$4366.10 per annum	\$5,625 per annum
On-trade licensed night club trading until midnight with lowest occupancy.	\$2619.60 per annum	\$3,375 per annum
On-trade licensed club (without gaming): trading until 5.00am with maximum occupancy	\$429.80 per annum	\$15,750 per annum
On-trade licensed club (without gaming): trading until 3.00am with lowest occupancy	\$429.80 per annum	\$3,750 per annum
On-trade restaurant: trading until 5.00am with maximum occupancy.	\$214.90 per annum	\$7,875 per annum

a= Note in Victoria, occupancy is only used to determine fees for restaurant and club licensees if a "compliance history" risk fee applies. However for licensed night clubs, an occupancy multiplier is used in all cases.

Recommendation

- Introduce a risk based licensing fee system that, as a minimum, offsets the cost of alcohol-related harm borne by Government and the community. Criteria established for the development of the scheme should be based on, as a minimum, the duration of trading hours and crowd capacity.

Licence renewals

Annual licence renewal requirements facilitate regular reviews of licence conditions and further incentivise licensee compliance with the legislation. Without a licencing renewal process, licences are granted into perpetuity. This is problematic because it makes it difficult for liquor licences to be removed from the system, contributing to a greater number of licences and increased outlet density which contribute to harms.

Current policy

Licences in NSW are granted in perpetuity, this means that once a licence is granted, there is no requirement for the licensee to renew the licence. There is a current 'biennial return' process which requires licensees in NSW to submit information including their licence details, trading information, licence conditions and ownership details, venue size and patron capacity, and the



dates that the licensee and the premises' staff completed and approved RSA course. Failure to submit these biennial returns incurs penalties, however the extent to which this is enforced and policed is unknown.

There is also an existing policy that requires venues that stop trading for more than six weeks to notify ILGA or face court penalties.⁵⁸ However, by virtue of the perpetual licensing system in NSW, licences may become dormant without being cancelled.

Future directions

There is now significant evidence to demonstrate that the density of liquor outlets contributes to alcohol-related harms. However liquor licences in NSW continue to be granted into perpetuity. This results in a lack of accountability by licensees to update their trading information with OLGR and to ensure that licensees are complying with the legislation and regulation. Liquor licences should be subject to an annual renewal process which serves to facilitate regular reviews of licence conditions and licensee compliance with the legislation.

Recommendation

10. Introduce a process for the annual renewal of liquor licenses, with licensees who fail to submit their renewal having their licence revoked. This process should be tied to the annual risk-based licensing fee.



4. Monitoring and regulatory intervention

This section contains recommendations regarding liquor promotions, enforcement of sale and supply offences and penalties, and liquor licensing data collection.

Promotions

The promotion of alcohol influences the age at which young people begin drinking alcohol as well as their levels of consumption.⁵⁹ Of particular concern are price-based promotions as there is an inverse relationship between the price of alcoholic beverages and levels of consumption and harms. Evidence has consistently shown that lower alcohol prices result in increased consumption and harms. A meta-analysis of 112 international studies showed that the price of alcohol is inversely related to overall consumption of alcohol including at harmful levels.⁶⁰

Point of Sale promotions (POS) refers to promotional materials found within or on the exterior of licensed premises at the point where an alcohol purchase is made (e.g. happy hours, free gifts with purchase, prominent signage, competitions, price discounts for bulk purchases, and sale prices). POS involving price or volume discounts and have been found to be particularly effective in encouraging the purchase of increased volumes of alcohol.^{61 62} POS liquor marketing is “ubiquitous” and “aggressive”,⁶³ which is highlighted by the fact that liquor outlets in Sydney host an average of 30.2 POS promotions per outlet.⁶⁴

POS are likely to affect overall consumption of underage drinkers, as well as the consumption patterns of harmful drinkers, and regular drinkers.⁶⁵ This is partly because young people are capable of interpreting the messages and images of alcohol advertisements in the same way as adults do.⁶⁶ Consumer studies also reveal that exposing young people to alcohol advertising increases the likelihood of them starting to consume alcohol as well as increasing consumption in those already consuming alcohol.^{67 68 69}

Current policy

Liquor promotions in NSW are regulated under sections 100 to 102 of the Act. The Regulations may declare undesirable liquor products under section 100 of the Act, and under section 101 of the Act the Director-General of OLGR may restrict or prohibit sale or supply of undesirable liquor products. Section 102 of the Act allows the Director-General to “restrict or prohibit [the] undesirable promotion of liquor” more generally. Section 102 (4) specifies that the Director-general of OLGR may not restrict or prohibit the promotion of liquor by a licensee if the type or format of the offending promotion is not included in the *Liquor Promotion Guidelines* issued by the Director-General.⁷⁰ Promotions under section 102 that may be restricted or prohibited include those promotions that:

- a) Are likely to have a special appeal to minors;
- b) Are indecent or offensive;
- c) Involve the provision of liquor in non-standard measures or the use of emotive descriptions or advertising that encourages irresponsible drinking and is likely to result in intoxication;
- d) Involve the provision of free drinks, or extreme discounts, or discounts of a limited duration

- 
- e) Encourage irresponsible, rapid or excessive consumption of liquor; or
 - f) The restriction or prohibition is otherwise in the public interest.

The Act also currently specifies that the Director may restrict or prohibit promotional activities that “[involve] the provision of free drinks, or extreme discounts or discounts of a limited duration that creates an incentive for patrons to consume liquor more rapidly than they otherwise might”.⁷¹ The current Promotion Guidelines are predominately focused on promotions that may take place at an on-licence premises (e.g. a bar, pub or hotel).

During 2012 and 2013 OLGR reviewed the Liquor Promotion Guidelines. As part of this review, OLGR consulted with members of the alcohol industry. NAAPA wrote to OLGR requesting that they be included as part of the consultation, this request was denied. In July 2013 documents were subpoenaed from the NSW Government on its consultation with the alcohol industry. It is clear from the documents released that the alcohol industry has significant influence on the development of Promotion Guidelines, as each version of the Promotion Guidelines appeared weaker and inadequate to regulate harmful promotion practices.

The Promotion Guidelines also contain vague definitions of what constitutes an ‘extreme discount’. Interpretation of what constitutes extreme discounting or harmful promotions are largely subject to the judgment of the licensee. As a result of extreme discounting promotions, alcohol can currently be purchased in NSW for as cheap as 22 cents a standard drink.

Future directions

The current iteration of the Promotion Guidelines fails to appropriately regulate promotions within the contemporary market dynamics for liquor (i.e. most Australian consumers drink alcoholic beverages in a domestic setting⁷²) and promotional methods of liquor promotion on premises (i.e. POS liquor marketing). As a result, these Guidelines do not adequately address harm minimisation in the promotion of liquor, nor do they adequately address on- and off-licence venues and public health concerns regarding liquor promotions.

The Guidelines also do not adequately address price promotions which results in alcohol being made available for as little as 22 cents per standard drink. This is problematic because lower prices are associated with increased consumption and harms.

Measures to limit harmful price discounting can be implemented at the state and territory level such as restrictions on discounting practices. Price based promotions such as bulk buying specials is common practice by retailers. For example, Beer Wine Spirits (BWS) is currently selling three five litre casks of wine for \$33, this is the equivalent of 22 cents a standard drink. Price promotions can be regulated through the introduction of a minimum price for alcohol which specifies the lowest price per standard drink at which alcohol can be purchased.

In Canada the introduction of increases in the minimum alcohol price in British Columbia (10 per cent) and Saskatchewan (10 per cent) resulted in reductions in alcohol consumption overall and for all beverage types of 3.4 per cent and 8.4 per cent, respectively.⁷³ A study that looked at the relationships between increases in minimum alcohol prices, changing densities of liquor stores and alcohol-attributable deaths in British Columbia found that setting a minimum price of \$1.25 per standard drink would prevent 23.03 per cent of alcohol attributable deaths after the first year of implementation.⁷⁴

Ceasing harmful price discounting can no longer occur will also reduce the price differential between on- and off-licence premises. To adequately address liquor promotions in the future, policies relating to liquor promotions should be elevated and included within the regulations with a clearer indication of what specifies a potentially harmful promotion. The Act should also specify that alcohol should not be sold for less than one dollar per standard drink to eliminate reckless price promotions that contribute to alcohol-related harms.

The below table is an example of how a one dollar minimum floor price would influence the prices of alcohol products. A five litre cask of wine would be most impacted by the introduction of a minimum floor price.

	Minimum price with \$1 per standard drink
375 ml full strength beer (1.4 standard drinks)	\$1.40
750 ml bottle of white wine (7.7 standard drinks)	\$7.70
750 ml bottle of red wine (7.7 standard drinks)	\$7.70
340 ml RTD (1.3 standard drinks)	\$1.30
700 ml bottle of spirits (22 standard drinks)	\$22.00
Five litre cask of wine (43 standard drinks)	\$43.00

Recommendations

11. Strengthen the *Liquor Act 2007* to prohibit the harmful discounting and promotion of alcohol products by including within the *Liquor Regulations 2008* provisions relating to prohibited liquor promotions, and ensure that these are adequately enforced. These should address both on- and off-licence premises with equal weight.
12. Introduce a minimum price for alcohol at one dollar per standard drink, with alcohol not being permitted to be sold for less than this price.
13. Introduce a policy that prohibits alcohol promotions from being placed on state and local government property.

Responsible Service of Alcohol

Responsible Service of Alcohol (RSA) includes a range of responsibilities for licensees and people working in licensed venues. These responsibilities include providing water and food to patrons, not serving alcohol to intoxicated persons and the service of alcohol in measures that reduce the risk of rapid consumption. RSA requirements are put in place to ensure that licence venues are as safe as possible. However, providing a safe environment does not occur if the RSA measures are not enforced or policed.



Current policy

All staff that work in licensed premises in NSW are required to hold an RSA Certificate. Part 5 of the Liquor Regulations contains provisions relating to the responsible sale, supply, service and promotion of liquor. RSA training is mandatory for licensees, approved managers, staff involved in the sale, supply, promotion and service of alcohol, volunteers who have liquor service responsibilities and security officers with crowd control duties.

ILGA and OLGR have the jurisdiction to impose licence conditions including alcoholic drink restrictions (i.e. restricting the sale of ‘shots’, mixed beverages with more than 30mL of alcohol, ready-to-drink beverages with more than five per cent alcohol volume, beverage quantity limitations and time limitations on their sale) and additional RSA actions on- licensed premises (i.e. RSA marshals, no drink stockpiling by patrons, ceasing sale and supply of alcohol 30 minutes before closing time). These conditions work to support licensees RSA responsibilities and create safer environments for patrons on- and off-premises.

In NSW RSA requirements are currently enforced by the NSW Police and Compliance Officers at the Office of Liquor Gaming and Racing (OLGR). There is currently no legislative obligation for licensed premises to report on the compliance actions of OLGR or the NSW Police in undertaking their compliance activities.

As part of the current Biennial reporting requirements, licensees must report on the number of staff who completed RSA training. The *2010-11 Biennial Liquor Licence Return* does not provide a yearly breakdown of the number of staff that completed RSA training. However figures were given for the period 1 July 2006 to 21 August 2011 which showed that there was an 80.7 per cent increase in the number of staff who completed RSA training.⁷⁵

Future directions

For RSA practices to be effective, they need to be enforced and promoted. Without appropriate enforcement mechanisms, RSA measures have limited impact on the behaviour of people working in licensed venues and do not reduce alcohol-related harms.⁷⁶

A study looking at alcohol-related harm and the night time economy, observed the practices of licensed premises in the Australian cities of Geelong, Victoria, and Newcastle, and noted that “late-night venues are significantly more likely to adopt practices if they are mandatory compared to voluntary. This is especially the case for strategies involving the responsible service of alcohol”.⁷⁷

The study also noted that the imposition of licence conditions on beverage types, quantities and time limitations on beverage sales allowed servers to more easily enforce RSA guidelines.⁷⁸ To reinforce RSA compliance and to assist licensees to enforce RSA requirements, such licence conditions should be imposed as a standard requirement for the operation of all existing and new on-premises licensed venues in NSW.

A recent audit of licensed premises in Kings Cross found that there was a large disparity between the number of people who were refused service due to intoxication and the number of people being removed from premises because of intoxication.⁷⁹ This supports contentions that people continue to be served alcohol until they are heavily intoxicated and are then removed from the premises.



Recommendations

14. Strengthen the responsible service of alcohol by:

- Strengthening enforcement measures throughout NSW, including Compliance Officers visiting licensed premises outside of regular business hours;
- Introducing mandatory RSA-related licence conditions for all new and existing on-premises licensed venues in NSW, including alcoholic drink restrictions (i.e. sale of 'shots', mixed beverages with more than 30mL of alcohol, ready-to-drink beverages with more than five per cent alcohol volume, beverage quantity limitations and time limitations on their sale) and additional RSA actions (i.e. RSA marshals, no drink stockpiling by patrons, ceasing sale and supply of alcohol 30 minutes before closing time);
- Enhancing the transparency of RSA compliance by requiring OLGR and the NSW Police to publicly report on compliance activities relating to the *Liquor Act 2007*, the number of venues inspected and their location, the times of day that these venues are inspected and the number of identified breaches of compliance; and
- Extending enforcement powers to provide local government employees with the ability to enforce RSA provisions under the *Liquor Act 2007*.

Controlled Purchase operations

Controlled purchase operations involve supervised minors attempting to buy liquor from licensed premises to test licensees' compliance with supply laws. New Zealand currently utilises controlled purchase operations for alcohol service. These have worked effectively for many years to support New Zealand Police in their applications to licensing authorities for the suspension or cancellation of offenders' liquor licences.^{80 81}

Current policy

Part 7 of the Act contains special provisions relating to minors. Under section 117(3), it is a defence to a prosecution for an offence if the minor was 14 years of age or above and had used a convincing proof of age document to procure the alcohol.

Controlled purchase operations for responsible service of tobacco enforcement is legal in NSW, but are not legal for responsible service of alcohol enforcement.⁸²

Future directions

Despite the sale of alcohol to minors (persons under the age of 18 years) being prohibited in NSW, in 2010 7.3 per cent of 16-17 year olds purchased alcohol themselves, according to the 2010 National Drug Strategy Household Survey.⁸³ There is currently no provision in the Act that sufficiently targets the identification of irresponsible licensees.

This is concerning given young people are at increased risk of alcohol-related harms.⁸⁴ Controlled purchase operations should be made legal for enforcing the legal drinking age for alcohol.



Recommendations

15. Enable police and regulatory authorities to penalise irresponsible alcohol servers and retailers by legalising controlled purchase operations for identifying and prosecuting licensees found to be selling alcohol to people aged under 18 years.

Data collection

Data collection on alcohol consumption and harms provides useful information on what Australians drink and the harms associated with alcohol. This information enables researchers and policy makers to develop, implement and track the progress of evidence-based alcohol policies.

Current policy

In relation to alcohol consumption data in NSW, this information is available through population level surveys such as the National Drug Strategy Household Survey, which relies on self-reporting. Harms data in NSW is collected through a number of agencies. BOSCAR collects and reports on alcohol-related assaults on police, domestic and non-domestic assaults and offensive behaviours in each local government area. NSW Health collects and publishes data on alcohol-attributable hospitalisations, deaths, injuries and emergency department presentations.

Future directions

The assessment of alcohol consumption can be strengthened through the collection of wholesales alcohol data. Currently NSW is one of three Australian states or territories that do not collect wholesale alcohol sales data. This is despite the World Health Organization (WHO) recommendation that alcohol sales data is an essential component in providing a comprehensive picture of alcohol consumption.⁸⁵

Alcohol sales data would allow NSW to assess the proportion of alcohol sold at off-trade locations compared to on-trade, and to map alcohol sales according to suburb, and potentially by licensed premise. This would allow an assessment of whether the licensed premises with the most alcohol-related incidents also have the highest volume of alcohol sold. If the alcohol sales data is disaggregated by alcoholic beverage types, it could also provide insights into whether certain products are associated with more alcohol-related incidents.

NSW data collection on alcohol-related harms can be improved in a number of ways. NSW would benefit from collecting regular and up-to-date data about characteristics of licensed premises (such as trading hours, occupancy and compliance with liquor legislation) to determine the extent to gain a greater indication of the impacts of these measures on harms and the ability for policies and programs to address influence these harms.

Expanding the collection of alcohol-related health data to include all the emergency department presentation and ambulance attendances in NSW is an important step in understanding the impact and cost of alcohol on NSW health system.

The impact of alcohol on NSW Government services is just not limited to the health system. The recent Auditor General's report noted that the NSW Police and Justice and NSW Community Services are also agencies that incur alcohol-related costs.⁸⁶ In line with the recommendation



made by the Auditor General regarding data collection, it is important that alcohol-related data collection occurs within a range of NSW Government agencies, including NSW Health, Community Services, and Criminal Justice.

Broadening the collection of alcohol-related data in NSW will assist in gaining an understanding of the true extent of alcohol harms in NSW.

Recommendations

16. Amend the *Liquor Act 2007* to include mandatory collection and public reporting of alcohol sales data and data on liquor licensees' occupancy, trading hours and compliance with the liquor legislation.
17. The collection of alcohol-related data should be extended to include other types of data such as:
 - Alcohol-related emergency department presentation;
 - Alcohol-related ambulance attendances;
 - Alcohol-related criminal justice data; and
 - Alcohol-related community services data.



5. Community and stakeholder input

This section contains recommendations regarding public notice requirements, objections to licence applications, and complaints concerning licensed premises.

Public notification

The primary object of the Act is as follows:

‘To regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community’.

Enhancing community awareness, engagement and input in licensing matters is steeped in the principles of participatory governance and serves to make policy decision-making more responsive to local community interests in harm minimisation.

Current policy

The Liquor Regulation provides for two approaches to raising public awareness of new licence applications:

- A public notice relating to the application must be fixed to the relevant premises;⁸⁷ and
- Applicants are required to notify and consult special interest groups and local authorities pursuant to completing their community impact statements (CIS).⁸⁸

CIS requirements depend on the type of licence applied for. ‘Category A’ CIS apply to applicants for on-premise licences deemed to be ‘low’ risk (e.g. restaurants). ‘Category B’ CIS apply to licence applications for venues deemed to be of a higher ‘risk’ (e.g. hotel and club licences).^{89 90}

Both Category A and B CIS require consultation with local consent authorities, local police, the occupier(s) of any neighbouring premises, and special interest groups or individuals identified or referred to the applicant by ILGA. Category B CIS require further consultation with the NSW Department of Health, NSW Department of Community Services, NSW Roads and Traffic Authority, and recognised leaders or representatives of the local Aboriginal community in the area.

CIS require applicants to inform ILGA of any nearby community buildings, facilities and places (e.g. hospitals, places of worship, educational institutions, facilities for vulnerable persons, alcohol-free zones, public parks and sporting grounds) that may be sensitive to the introduction of a new licensed premises in the area.

Small Bar licence applications do not need to include a CIS if development consent has been sought from the local council to use the premises.

Future directions

The consultation lists for both categories of CIS are too narrow. If a concerned citizen or community group is not “identified or referred” to the applicant by ILGA, or if the notice is not properly affixed to the premises or in plain view for the general public, then concerned citizens may be neither consulted nor made aware of the licence application and of their right to object to the application.



There are three areas where CIS notification processes can be strengthened, these are:

- Applicants should not have to wait for ILGA to identify which “special interest groups or individuals” the applicant must consult with. These stakeholders are already listed in CIS forms, and should be promptly and directly notified of a licence applicant’s intentions to apply for a liquor licence;
- Public notices pertaining to licence applications should be more broadly published. Concerned stakeholders in the local area of the proposed premises may not necessarily see the notice affixed to the proposed site. These stakeholders may still be exposed to the adverse impact of a licence being approved in the area, and should be notified by alternative means (e.g. local newspapers); and
- The availability and accessibility of information regarding licence applications for the general public needs to be improved and more directly available to concerned members of the public.

There are serious concerns as to the degree of compliance with notification requirements for CIS, and the broader implications regarding procedural fairness of the CIS system. ILGA recently conducted random “spot checks” of licence applicants’ compliance with public notice requirements in Balmain and the Sydney CBD. The investigations discovered that of the seven premises inspected in Balmain, three new applicants apparently did not comply with the site notice; and of the six premises inspected in the Sydney CBD, three did not comply.⁹¹ There is the need for more checks on-licence applicants to ensure their compliance with CIS and public notice requirements. Such actions secure the integrity of Liquor Act’s Objects as well as the right of the public to make submissions in relation to licence applications under section 44 of the Act.

The current CIS systems is flawed, the true intent of the CIS system is not being maximised but rather being used by applicants as a tick box measure as part of the licence application purpose. As stated on the OLGR website the purpose of a CIS is to “gain an understanding of the impact that granting an application will have on the local community”.⁹² It is argued that this social impact is not effectively being assessed due to the lack of compliance; the lack of data collected and the bias in applicants collating community concerns for the purpose of the CIS requirements. ILGA relies on the licence applicant as the primary reporter of social impact – assuming no independent complaints or objecting submissions are made to ILGA.⁹³

It is important that ILGA is sufficiently resourced to independently review and assess concerns raised in CIS to gain a greater understanding of the social impact. Along with improving the requirements of a CIS, improving alcohol-related data collection and strengthening the role and responsibilities of authorities will support decision makers in assessing the broader social impact liquor licenses will have on communities.

Recommendations

18. Improve public awareness, engagement and input in licensing matters by:

- Amending CIS forms to require all licence applicants to:
 - Publish notices of their licence application in local newspapers;
 - Write to the owners and occupiers of nearby community buildings, facilities and places that may be sensitive to a new licenced premises (i.e. hospitals, places of worship, educational institutions, facilities for vulnerable persons, alcohol-free



zones, public parks and sporting grounds), notifying them of the licence application and of their rights to make submissions to ILGA;

- Sufficiently resource ILGA to independently review, assess and follow up with CIS stakeholders as to whether they were contacted by applicants in relation to licence applications, and whether they have any objections to the application in question. A lack of a response should not be considered to be assent to a licence application;
- Abolish the 'Category A' and 'Category B' CIS system, replacing it with a standard CIS form based on the present 'Category A' CIS and revised stakeholder notification provisions;
- Enhancing the availability and accessibility of information regarding licence applications by:
 - Implementing a notification system for new licence applications that members of the public and authorities can sign up to receive;
 - Developing more 'user-friendly' websites for OLGR and ILGA that makes tracking new licence applications and licence approvals easier for the general public.
- Extend the timeframes for communities to respond to new licence application from 30 days to 60 days.

Objections

In light of their experiences or awareness of local alcohol-related harms, there has been increasing interest from communities across NSW in how they can be involved in the regulation of liquor licensing pursuant to minimising local levels of alcohol-related harm. There are three common imperatives for community action in licensing matters:

- An awareness of pre-existing alcohol-related problems in their locality;
- A common perception that these harms are at unacceptable levels and compromise the welfare of others; and
- A sense of injustice regarding the inhibited action by authorities to minimise the risk of future harms or reduce existing levels of harm.⁹⁴

Community engagement and input in liquor licensing matters, as functions of democratic governance, are important to ensure that appropriate decisions are made by regulatory authorities with regard to harm minimisation in liquor-licensing matters.

Current policy

Under section 44 of the Act, the public have the right to make submissions to ILGA regarding any licence application. Submissions objecting to new licence applications can be made directly to ILGA or to the prospective licence applicant as part of their community impact statement (CIS) consultation.^{95 96}

There is the presumption by the regulatory authorities that, all other things being equal, a lack of objections submitted with regard to an application constitute a passive endorsement. This issue was reflected in a recent decision by ILGA to approve a General Bar licence in Surry Hills "... in light of the lack of opposition to or adverse social impact analysis of the application by Police, Council and the Director-General [of OLGR]".⁹⁷



Under the current licensing regime, it is left to objectors to demonstrate that foreseeable harms from a licence approval outweigh any foreseeable benefits.

Future directions

A lack of response from authorities whom applicants are required to consult should not be treated as a tacit approval or assent to a licence application. Where there is an absence of responses or helpful feedback from key stakeholders, ILGA should investigate and follow-up with stakeholders to ascertain whether they approve or object to a licence application.

The burden of proof on objectors hinders community engagement and input in licensing matters. There is the need to encourage community engagement and input in licensing matters in order to balance representations made by licence applicant in CIS. This can be achieved by reducing the burden of proof for objectors; and by enhancing access to information and resources for objectors.

Community objectors do not necessarily have the capabilities (in terms of time, financial costs, and research capacity) that are needed to meet the burden of proof. It is particularly challenging for the average objector to articulate their case in line with ILGA policy and to appropriately estimate the foreseeable impact of a licence approval.

To assist objectors in the preparation of evidence-based submissions, ILGA should be able to direct members of the public to resources and databases sanctioned by ILGA that contain data on alcohol-related harms and information on how ILGA considers submissions and testimony. In addition, ILGA should be sufficiently resourced to investigate claims made in submissions from members of the public in relation to licence applications.

Recommendations

19. Improve communities ability to participate in objection processes by ensuring that alleviate:
 - The burden of proof that currently rests on objectors is reduced by providing ILGA with sufficient resources to cross-reference applicants' CIS with harms data from government agencies and to investigate objections; and
 - The burden of proof that currently rests on objectors by delivering more 'user-friendly' information (e.g. fact sheets and information links to local alcohol-related data) for objectors to refer to through ILGA and OLGR's websites.

Complaints

Many communities across NSW experience first-hand the harms of risky alcohol consumption to the consumer and to others. The 2012 *Community Attitudes and Behaviours: NSW* found that most NSW adults believe that more needs to be done to reduce the harms caused by alcohol-related illness, injury, death and related issues.⁹⁸ The Poll also found that the majority (76 per cent) believe that alcohol-related problems will remain the same or worsen over the next five to ten years.⁹⁹ The concerns experienced by communities across NSW are warranted given that the latest available data shows that in 2011-12 there were 50,950 alcohol-attributable hospitalisations¹⁰⁰ and 26,038 alcohol-related assaults.¹⁰¹ Facilitating community engagement and input in liquor licensing matters is important to ensuring that appropriate decisions are



made by regulatory authorities with regard to harm minimisation and intervention in liquor licensing matters.

Current situation

Under the current licensing system there are have three channels for submitting complaints directly to the regulatory authorities that are open to members of the public:

- Submission of a disturbance complaint regarding a particular licensed premises/licensee/manager/associate of the licensee.¹⁰² This can be made directly to the Director-General of OLGR or ILGA;
- The Director-General of OLGR may convene a conference to hear submissions from the public in relation to disturbance complaints;¹⁰³ and
- Submissions may be made to ILGA requesting the review of particular decisions made by ILGA or OLGR.^{104 105}

There are no provisions in the Act that allow community groups and private citizens to initiate disciplinary complaints¹⁰⁶ or to pursue the imposition, variation or revocation of licence conditions.¹⁰⁷ It has been noted by ILGA that concerned parties “*may provide information to an agency that is capable of making a complaint, but it will be a matter for that eligible complainant to proceed with a complaint*”.¹⁰⁸ The Commissioner of Police, the Director-General of OLGR, the local consent authority (understood to be the local council), or ILGA itself may act as such agents.

Future directions

Private citizens should not have to rely on other authorities (i.e. NSW Police Force, OLGR or ILGA) to initiate complaints on their behalf if they suspect licensees are in breach of the Act. The limited provisions for direct participation in complaint submissions pose a barrier to community engagement in licensing matters. These provisions could be more frequently and more effectively utilised to act on alcohol-related harms if the legislation cut out the ‘middle-men’ and allowed members of the public to directly pursue disciplinary complaint actions under Part 9 of the Act.

ILGA should have greater capacity to investigate complaints against licensed premises. An added barrier to community engagement in licensing matters is the burden of proof that rests with complainants to convince the regulatory authorities to intervene. This reiterates the need for ILGA to be better resourced in order to manage complaints in a timely manner, and to have the capacity to undertake its own investigations in relation to complaints against licensed venues.

Authorities and licensees should provide more information on the submission of complaints. To enable greater community awareness, engagement and input in licensing matters, there is the need to deliver more relevant information on the submission of complaints. Such information should be made available through ILGA’s and OLGR’s respective websites, local government offices and from licensed premises. Information for complaints should be displayed on A5-sized stickers in the front window of licensed premises, and on posters at the entrances of licensed events.



Recommendations

20. Improve communities ability to participate in compliance processes by:

- Providing for members of the general public to submit complaints on grounds detailed in Part 9 of the *Liquor Act 2007*;
- Expanding the capacity of ILGA to investigate complaints against licensees in order to reverse or reduce the burden of proof that rests on complainants; and
- Deliver more information on where to direct complaints and how to submit complaints through OLGR and ILGA's web-sites, local government offices, and community legal centres.

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