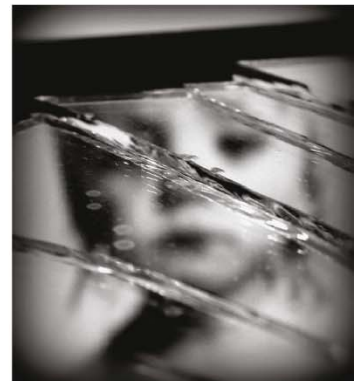
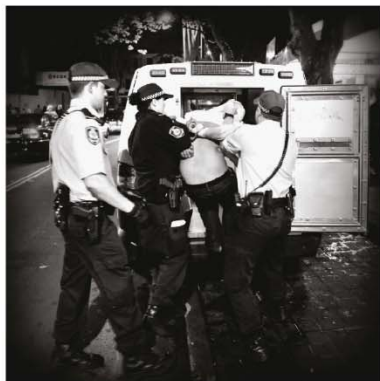




**Submission to the ACT Issues paper:
Proposals for regulatory improvements**



October 2015

About the NSW ACT Alcohol Policy Alliance

The NSW ACT Alcohol Policy Alliance (NAAPA) aims to reduce alcohol harms by ensuring that evidence-based solutions inform alcohol policy discussions in New South Wales (NSW) and the Australian Capital Territory (ACT). NAAPA currently has 47 member organisations from a range of fields including health, community, law enforcement, emergency services and research.

The following are the ACT members of NAAPA:

- Alcohol Tobacco and Other Drugs Association ACT (ATODA)
- Australian Medical Association ACT
- Canberra Recovery Service, Salvation Army
- Cancer Council ACT
- CatholicCare Canberra & Goulburn
- DIRECTIONS ACT
- Foundation for Alcohol Research and Education (FARE)
- Karralika Programs Inc.
- Public Health Association of Australia ACT Branch
- Ted Noffs Foundation (ACT)
- The Royal Australasian College of Surgeons

To contact the NAAPA secretariat email info@naapa.org.au or for more information about NAAPA visit www.naapa.org.au

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Summary

The NSW ACT Alcohol Policy Alliance (NAAPA) welcomes to the opportunity to provide comment on the *Issues paper: Proposals for regulatory improvements* (the 'Issues paper').

As indicated in our previous submission, the harms from alcohol in the Australian Capital Territory (ACT) are significant. The impact of this harm is reflected in alcohol-related emergency department presentations in ACT, with more than 18 people a day presenting because of an alcohol-related injury. The regulation of alcohol and the associated liquor licensing processes are critical elements that contribute to a safer and healthier community. The issues raised in this paper provide the ACT Government with an opportunity to significantly strengthen the regulation of alcohol.

Across Australia alcohol is more affordable than it has been in over three decades, it is more widely available than it ever has been, and it is more heavily promoted. The ways in which alcohol is sold, promoted and made available contribute to the way that alcohol is consumed and the associated harms. To counter this, alcohol-control legislation and policies to reduce alcohol-related harms should be strengthened.

While some of the policies proposed in the *Issues paper* go some way to address alcohol harms, such as prioritising harm minimisation and providing greater engagement opportunities for community members in liquor licensing decisions, the priority of the ACT Government should be to reduce late night trading hours by introducing a 3am close and a 1am lockout for on-licence premises and 10pm close for packaged liquor.

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. Due to the harms associated with alcohol, there is clear justification for strengthening the regulation of the supply and selling of it across the ACT. It has been stated that holding a liquor licence is a privilege and not a right, therefore reducing fees for licensees for obeying the law should not be a consideration. Rewarding licensees for complying with legislation is akin to rewarding citizens with abiding by the law.

This review process also provides the opportunity to increase the transparency and public reporting of licensees who have been found to non-compliant with the *Liquor Act 2010*. Providing the public with information about the harms and risks that are associated with venues in the ACT will provide greater awareness about licensee practices and shine a light on those venues that require greater enforcement.

Reforms to the regulation of alcohol must acknowledge that the current system of regulation is not adequately mitigating the harms. These reforms must begin with:

- Prioritising harm minimisation as the primary object of the Act.
- Publicly reporting on venues that are non-compliant with the Act.
- Providing the Minister and Commissioner with the power to impose conditions on licensed premises to reduce associated risks.

The ACT Government should use this review process to introduce these policies and those highlighted in our previous submission as a matter of urgency.

Submission format

This submission will follow the format of the *Issues paper* and address the Issues for consideration under each section:

- Section 1: Proposals to streamline the Act and make it more effective.
- Section 2: Proposals to improve public consultation.
- Section 3: Proposals to address underage drinking.
- Section 4: Miscellaneous proposals.
- Section 5: Proposals to reduce regulatory burden.
- Section 6: Proposals for regulatory improvements.
- Section 7: Miscellaneous proposals.

This submission should be read in conjunction with the *Issues paper: Proposals for regulatory improvements*. Answers to each of the Issues for consideration should be considered as NAAPA's recommendations.

Section 1: Proposals to streamline the Act and make it more effective

Proposal (1)(a): Review the object of the Act

1. Should the object of the Act be amended to provide for harm minimisation to be given explicit primacy over the objects about industry and consumer responsibility?

The current Objects of the Act contain conflicting interests between harm minimisation, responsible development of the liquor industry, and personal responsibility.

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.¹

The *Liquor Act 2010* should be amended to prioritise public health and safety over all other Objects of the Act, including support for a vibrant industry and night time economy, when assessing liquor licensing applications and particularly in relation to outlet density and late night trading decisions.

2. If so, how could this be achieved (i.e. adopt the Victorian or New Zealand approach, or through another approach)?

The Victorian approach should be used as a model to prioritise harm minimisation. In Victoria the case of *Kordister Pty Ltd v Director of Liquor Licensing (Kordister)* can be used as an example of how harm minimisation can be applied.² 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 of this decision by the Victorian Civil and Administrative Tribunal (VCAT). 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.

Proposal (1)(b): Application of Act to small businesses

1. What types of businesses should be exempt from the requirement to hold a liquor licence?

Any business that intends to supply alcohol must ensure that they have the appropriate licence type as described under the Act. The final report of the National Competition Policy Review acknowledged that there is a clear justification for alcohol to be regulated due to the harm that it causes.³ Therefore exemptions under the Act should not be granted.

It is also important to understand that alcohol has been classified by the World Health Organization as a Group 1 carcinogen. This classification is only given to products that have been proven to cause cancer in humans. This is the same classification given to tobacco smoke and asbestos. Alcohol is a teratogen, neurotoxin and mind/mood altering substance. It is for these reasons that hospitals and other health services should not be exempt from the Act.

2. What criteria should apply to businesses to enable them to be appropriately exempted from the requirement to hold a liquor licence?

Any business that intends to supply alcohol as part of their service of operation should not be exempt from the Act.

Proposal (1)(c): Application of Act to bring your own (BYO) venues

1. Is the proposal outlined above (no licensing or permitting of BYO venues, but applying certain offences and responsible practice principles to these venues, potentially through a Code of Conduct or Guidelines) considered appropriate for regulating BYO venues in the ACT?

2. If not, what approach would you consider more appropriate and why?

The below answer applies to questions 1-2.

The current situation for BYO is unsatisfactory and should be overhauled as it does not address harm minimisation. Consideration should be given to developing a permit system for BYO similar to what occurs in Victoria. It is important that BYO venues adhere to Responsible Service of Alcohol (RSA) provisions under the Act to ensure that the harms from alcohol are minimised.

The *Issues paper* has highlighted a significant deficiency in regards to BYO. Applying the Victorian approach in the ACT has merit. Developing and applying a code of conduct for BYO permit venues should be explored. This code of conduct should include that it is offence to supply alcohol to minors and intoxicated persons. Similar to Victoria, the Commissioner should also have the ability to apply conditions on BYO permits if required.

It is essential that BYO permits ensure that they have effective systems in place that prevent intoxication and under aged drinking.

Proposal (1)(d): Application of Act to caterers

1. Is the proposal outlined above (amending the special licence category to provide that the licence applies at the licensed premises and at premises where the caterer has agreed to provide liquor for consumption by persons at those premises) considered appropriate for regulating caterers?
2. If not, what approach would you consider more appropriate and why?

The regulation of caterers must be considered in the context of RSA provisions within the Act and harm prevention best practices. It is important that any proposal does not provide opportunity for loopholes to be created. An example of this is in New South Wales (NSW) where a late night venue used a catering licence to avoid adhering to the appropriate community impact requirements.⁴

This example illustrates the need to ensure that any new proposal does not provide opportunity for loopholes to be exploited. It is imperative that RSA compliance and best practice harm minimisation are maintained and effectively enforced in the ACT.

Proposal (1)(e): Review the requirement that all company directors need responsible service of alcohol (RSA) training

1. Should RSA training be mandated for all directors of a corporation?
2. If not, should there be a requirement for at least one director to have the training, or should the requirement only exist where there is a direct link for people who are involved in supplying liquor for retail purposes on the premises?

The following answer addresses questions 1 and 2.

All staff members working in a licensed premise should be required to have the appropriate responsible service of alcohol (RSA) training. This should also be extended to the licensee of the premise, security staff and approved managers.

It is also important to recognise that there are fundamental flaws with the current RSA. RSA has been largely ineffective at preventing intoxication at licensed premises. A survey of young adults in 2011 by the Bureau of Crime Statistics and Research (BOCSAR) found RSA applied to very few young people reporting at least one sign of intoxication (such as loss of coordination or slurred speech). Only 7.1 per cent were refused service and only 4.2 per cent were asked to leave the premises.⁵ Convictions for selling alcohol to intoxicated patrons are also rare; making up a minority of liquor law breaches.⁶

This ineffectiveness of RSA and other harm minimisation provisions within the Act is reflected in the conflicting Objects of the Act of business interests and harm minimisation. More needs to be done to ensure that RSA is complied with and enforced in licensed premises.

Proposal (1)(f): Flexibility to change trading hours for special events

1. Should there be greater flexibility to change trading hours for one-off events?
2. If so, what model should be adopted (i.e. should there be limits on the number of times a venue can vary hours, should there be a limit on the latest trading hour that can be applied for or should this be discretionary, should venues have to provide specific evidence to demonstrate that the extended trading will be consistent with the harm minimisation principles of the Act)?

The following answer addresses questions 1 and 2.

Any changes to liquor licences, including changes to trading hours, should be by application. 'Flexibility' should not be contemplated by the ACT Government.

Caution is required in allowing flexibility to changes in late night trading, given that increased late night trading is associated with an increased risk of harm. Research by the BOCSAR in NSW looked at the relationship between alcohol and crime using NSW Police records. The study found that the percentage of alcohol-related assaults increased substantially between 6pm to 3am, with the highest rates occurring between midnight and 3am.⁷

The examples of one-off events used in the *Issues paper* have a focus on sporting events. Research has shown that there is an increase in alcohol harms during sporting events. A study by VicHealth found that there are a significantly higher number of cases of assaults across all population groups except females on the day of the AFL Grand Final.⁸ The study also found that for all groups there was a higher number of cases of alcohol intoxication on the day of the Melbourne Cup, and for all groups except females on the day of the AFL Grand Final and the event of the Commonwealth Games.⁹

1. What fees should apply?

Fees that are applied to venues that have applied for changes for one-off events should be assessed against the risk associated with the proposed changes.

2. Are there other options for providing venues with flexibility to amend conditions to support one-off events, including live music?

Any changes to liquor licences including changes to trading hours should be required to apply for the proposed change as currently required under the Act. 'Flexibility' should not be contemplated by the ACT Government.

3. Are there opportunities to improve how temporary licensing is issued to support one-off events?

Improving opportunities for how temporary licensing is issued should ensure that harm minimisation is prioritised. Any one-off event must ensure that the licence is subject to approval from Access Canberra and that the appropriate risks that could impact the community have been taken into consideration.

Proposal (1)(g): Remove the requirement for a risk-assessment management plan for low- risk venues

1. Should the requirement for a RAMP be removed for certain licence or permit types?

2. If so, which licence or permit types should be considered?
3. Should there be any additional criteria that is considered before the requirement for a RAMP is removed (i.e. approach in Queensland – dependent on trading hours and location)?

The below answer applies to questions 1-3.

All licensed premises that sell alcohol carry some risk. A monograph produced by the National Drug Law Enforcement Research Fund in 2003 on best practice strategies to reduce alcohol-related harms in and around licensed premises (the Monograph) highlighted the links between the type of licensed premise and alcohol-related harms. The Monograph found that restaurants, hotels and off-licences in particular are correlated with malicious damage to property, whereas off-licences, clubs and hotels are correlated with assaults and offensive behaviour.¹⁰

Licensees' management style and quality of management policies are important. They can either positively or adversely impact on alcohol-related problems and can contribute to unsafe and problematic alcohol-related environments.¹⁰ The documentation and implementation of their strategies to deal with alcohol-related risks can, and does, have a direct impact on alcohol-related harms and alcohol-related crime.

All licensed premises should be required to develop a risk-assessment management plan (RAMP) so that the management of risks associated with alcohol consumption and harms are mitigated.

4. If the requirement for a RAMP is removed for certain licence or permit types, should the Commissioner for Fair Trading have a discretion to impose a RAMP in certain circumstances (e.g. where a venue has had a number of reported incidents)?

The Commissioner should have the discretion to impose a RAMP on certain premises and also to impose extra compliance conditions on venues that are considered high risk.

5. Is there a different approach that could be considered that may reduce the administrative burden for some licence or permit types in preparing a RAMP?

No position.

Section 2: Proposals to improve public consultation

Proposal (2)(a): Improve how the community is consulted about new licence applications

1. Should the existing public consultation process be amended in the ACT?

Communities are affected by alcohol in a number of ways. For instance, they endure the noise and disruption from licensed venues, they avoid areas where alcohol use and misuse has led them to feel unsafe, they live alongside and are affected by alcohol-related violence and their children are witnesses of alcohol-fuelled violence. Only five per cent of Australians have made a complaint about a licensed venue and almost half feel they do not have enough say in the number of licensed venues in their local area.¹¹

There is currently no formal process in the ACT by which relevant stakeholders are directly consulted about new liquor licence applications. Therefore it is important that these existing public consultation processes are supplemented and improved.

2. If so, please comment on the appropriateness of the proposals noted above (i.e. automatic written notification to certain stakeholders, requiring the applicant to demonstrate no harm, including data on the Access Canberra website).

Licensees should be required to notify the following stakeholders (at a minimum) within three days of submitting their licence application:

- ACT Health
- ACT Policing
- local hospitals
- places of worship
- educational institutions
- community groups
- facilities for vulnerable persons and managers of alcohol free zones
- youth organisations
- public parks and sporting grounds.

This notice to stakeholders should declare the submission date of the licence application, and note their rights as stakeholders to make written representations to the Commissioner for Fair Trading.

It is also important that the Commissioner for Fair Trading follow up with ACT Health and ACT Policing in relation to licence applications within 14 days of the consultation period closing. A lack of written representations from ACT Health and ACT Policing in relation to licence applications should not be presumed by the Commissioner for Fair Trading to be a tacit approval of an application.

The *Issues paper* uses the NSW Community Impact Scheme (CIS) as an example of a potential model to follow. As highlighted previously, the NSW system requires significant improvement to ensure that community members are consulted appropriately.

It is also important to note that the NSW system contains a dual system that impacts on the approval of a liquor licence and the opportunity for public consultation. The first step involves obtaining planning approval through the Development Application (DA) process normally conducted by local councils under the *Environmental Planning and Assessment Act 1979*.¹² This is a prerequisite for the subsequent stage of gaining approval for the relevant liquor licence by the Independent Liquor and Gaming Authority (ILGA) under the NSW *Liquor Act 2007*.

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.¹³

It is essential that any formal public consultation mechanism developed in ACT that it is enforced to ensure that the right of the public to make submissions in relation to licence applications is upheld.

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

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 the licence applicant. 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 Access Canberra policy and to appropriately estimate the foreseeable impact of a licence approval.

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

3. Are there other suggestions for improving the public consultation process?

4. What options are available for ensuring that any improvements to the public consultation process are streamlined?

The following addresses question 3 and 4.

Providing a system for community members to access information on liquor licence applications is essential in ensuring that the community safety principles within the Act are upheld.

To assist members in accessing information alert system similar to the NSW ILGA online Noticeboard could be considered. The Noticeboard system provides members of the public with a service to be notified electronically of any liquor licence application falling within a geographic parameter.

In addition to this, where liquor licence applications are considered high risk (such as licensees applying to trade past midnight, larger packaged liquor outlets and those located within high risk areas) consideration should be given to the requirement to provide all surrounding premises within a 500 metre radius with a summary notice of the application.

Such notices should contain information to allow the public to make an informed decision whether the application may risk a negative social and/or health impact. This information should include:

- type of licence sought
- trading hours
- patron numbers
- size of premises
- licensee details
- proposed gambling facilities
- closing date of submissions
- harm minimisation measures proposed to reduce alcohol harms

- proximity to sensitive operations including but not limited to education facilities including pre-schools, all medical facilities including alcohol and other drug rehabilitation centres, women's refuges, religious facilities, alcohol free zones, youth services, and so on.

Access Canberra should also consider providing publically available data that shows that the liquor outlet density in the area. This type of information is available in Victoria on the Victorian Commission for Gaming and Regulation (VCGLR) website.

Consideration should also be given to a crime map that reports the number of assaults, both domestic and non-domestic, including both alcohol and non-alcohol-related. The NSW BOCSAR has a similar tool in place that can be used as a model.

Providing an online notice system along with publically available information will go some way to removing the burden of proof on the community. Any streamlining to the public consultation process must ensure that it does not exacerbate the burden of proof and provides members of the public with greater access to make informed decision about liquor licensing applications.

Proposal (2)(b): Improve the mechanism for the community to make complaints or objection

1. How could the existing general complaints process for liquor issues be improved?

The *Issues paper* highlights the narrow scope for complaints to be made by a member of the public regarding a liquor licence. Complaints processes should not be limited to a formal letter and include an option to make a complaint online or over the phone, to ensure all members of the community have the ability to make a complaint if required.

While members of the public have the right to make a complaint about a liquor licence operations, including the impact it has on community amenity or concerns with RSA practices, there is limited awareness on how members of the public would make such a complaint.

Access Canberra and licensees should provide more information on how to make a complaint. 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 Access Canberra websites 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.

An added barrier to community engagement in licensing matters is that the burden of proof rests with complainants to convince the regulatory authorities to intervene. This reiterates the need for Access Canberra 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.

Section 3: Proposals to address underage drinking

Proposal (3)(a): Remove defence to the supply of liquor to underage person over 16 who used fake ID

1. Should the defence to the supply of liquor to underage people over the age of 16 years who used false identification be removed?

The defence under section 110(6) of the Act should be removed. Any alcohol supply to minors is a concern and legal provisions ensuring that alcohol is not supplied to minors should not be watered down. The legal requirement should be that the licensee has an effective system in place to prevent the entry and supply of alcohol to/by persons under the age of 18.

The existing ACT legislation only requires that person seeking entry was at least 16 years of age and showed the relevant person “an identification document identifying the young person as an adult”. This places no obligation on the person viewing the ID to properly examine the identification for its authenticity.

Proposal 3(b): Legalise controlled purchase operations

1. Should consideration be given to allowing controlled purchase operations?
2. If yes/no, please provide reasons.

The following is in response to questions 1 and 2.

Prosecution for an offence of supplying liquor to a young person under section 110 (7) requires a police officer to have witnessed the supply of alcohol to the person. The ACT does not currently have laws in place that enable police to assess a licensee’s compliance with laws relating to the sale or supply of liquor to minors.

Controlled purchase operations (CPOs) involve supervised minors attempting to buy liquor from licensed premises to test licensees’ compliance with supply laws. New Zealand currently uses CPOs 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.^{14,15}

Legalising CPOs will make licensees more attentive in their observation of ‘supply to minors’ legislation so as to avoid being exposed by a CPO for contravening the *Liquor Act*. CPOs should be legalised under Part 10 of the Act to identify and prosecute licensees found to be selling alcohol to people under the age of 18 years.

Data from Western Australia (WA) shows that liquor retailers are not complying with their own RSA policies of asking for identification of people that look under 25 years. Compliance operations undertaken by WA police found that 72 per cent of cadets that were under 25 years were able to make a purchase without having to produce ID.¹⁶ These results were similar to a compliance operation undertaken in 2007 where 77 per cent of purchases were successful without ID.¹⁷ This evident lack of commitment by liquor retailers to comply with their own policies is another reason to support CPO being legalised and protecting the sale of alcohol to minors.

Section 4: Miscellaneous proposals

Proposal (4)(a): Disincentives/incentives to alter licensed premises' risk profiles

1. How should licensees be encouraged to achieve compliance and reduce the risk profiles for their licensed premises:
 - a. **reduce fees for compliance/implementation of best practice**
 - b. **impose higher fees or financial penalties for non-compliance**
 - c. **impose other sanctions on trading (including suspension of trade, lockouts etc.) which increase with the seriousness or number of compliance failures**
 - d. **impose special licence conditions on premises with high levels of violent incidents.**

Alcohol is a harmful product and since there are significant risks associated with selling and supply the product, licensees have an obligation under the law to ensure that they comply with relevant legislation. Owning a liquor licence is a privilege not a right.

Rewarding licensees for complying with legislation is akin to rewarding citizens for abiding by the law. The option to reward licensees for complying with their legislation should be opposed and the annual risk-based licensing remain in place to offset the cost of alcohol-related harm borne by government and the community. The intention of a risk-based licensing scheme is to set fees for licensed venues according to the level of harm associated with the venue. Therefore the basis of such schemes is to manage risks, with the overarching principle being that there is a fee to operate and licensees who increase the risk associated with their licence by breaching the Act pay a penalty fee. Appropriate penalties and fees should be applied to licensees who breach provisions of the Act.

Swift and certain sanctions are an effective approach to deterring contravention of the liquor laws and regulations by licensees, permit-holders and applicants for licences and permits. The 'swift and certain' approach follows the argument that:

*If punishment is swift and certain, it need not be severe to be efficacious. If punishment is uncertain and delayed, it will not be efficacious even if it is severe.*¹⁸

Dr Mark Kleimann, Professor of Public Policy at the University of California contends that this approach is applicable to most contexts of law enforcement.¹⁹ This approach of swift and certain sanctions should be applied to breaches of the *Liquor Act*, *Liquor Regulations* and *Liquor Promotion Guidelines*.

Swift and certain sanctions create strong and predictable deterrents and penalties for offensive and dangerous conduct by licensees, permit-holders and their staff on licensed premises. All recommendations in this submission, as well as existing provisions within the legislation, would be supported by swift enforcement and certain warnings and penalties.

Under section 146 (1) of the *Liquor Act*, a senior police officer may order a licensee, or permit-holder, to close licensed premises, or permitted premises for 24 hours. This is called an emergency closure order. An emergency closure order is allowable if the *Liquor Act* has been breached, or is likely to be breached; and the closure of the premises is necessary to prevent or reduce a significant threat or risk to the safety of the community.

This does not clearly provide for closures in the event of a significant incident that recently occurred which threatens the safety of patron(s) and the community. There is a need for the temporary closure of licensed premises in the event of a patron being seriously injured from an alcohol-related assault occurring on the premises. Temporary closures are meaningful actions which serve as a practical aid for police and ambulance services to respond to, and preserve the crime scene of, incidents where patrons of licensed venues are victims of an alcohol-related crime and severely injured.

ACT Police should be granted the powers to swiftly and consistently impose meaningful sanctions for premises that contravene the Act and the *Liquor Regulation 2010*. These powers should include on the spot 24 hour closures, stricter management plans for premises, and revocation of extended trading authorisations.

2. Should the ACT adopt a risk rating scheme similar to the 'Scores on Doors' scheme applying in some jurisdictions in the food industry?

The ACT Government should implement a system modelled on the three strikes scheme and violent premises list in NSW.

These types of schemes provide opportunity for members of the public to know the level of compliance and the potential risk associated with licensed venues. These types of models also have the potential to act as a deterrent, as the possibility of being publically listed on the violent premises list or receiving a strike would have negative associations for a licensee.

It is important to note that when looking at the NSW schemes that lessons are learnt to ensure that a system in the ACT would be as robust and as effective as possible. A system in the ACT should ensure that enforcement mechanisms are consistently applied across of liquor licenses at a minimum with greater focus on those liquor licenses that are considered high risk. All businesses within the ACT should be subject to these schemes, providing exemptions would undermine the purpose and provide opportunities for loopholes to be created.

Reports of transgressions should be published in a timely and transparent manner to ensure licensees are held to account.

When venues have been given a strike this will also provide Access Canberra and ACT Police with further evidence for increased compliance activity for a particular liquor licence.

It is important to note that these types of schemes should not be designed to replace harm minimisation practices that exist under the Act or those that have been proposed as part of this review. These schemes should be seen as a mechanism to assist the regulator in enforcing licensees' responsibilities under the Act.

3. Should the Minister have the power to declare 'risk zones'?

4. If so, what guidelines should be in place for making this type of declaration?

5. What should the effect of a declared risk zone be (i.e. higher level of penalties for offences, additional conditions etc.)?

The following is in response to questions 3-5.

The 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.

Action to minimise harms across a locality in a consistent manner are rare and vulnerable to legal challenges by the local liquor and related industries.²⁰ The Minister and the Commissioner 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 ACT Health and ACT Police pinpoint localities experiencing high incidence levels of harms.

When declaring zones, consideration should also be given to the number of liquor licences in a locality. In particular the concentration of licensed premises and when an area has reached 'saturation'. This measure could be when there is no additional net community benefit for an additional licensed premise in that area.

Locality-wide policies for future licence approvals should also be reviewed and, where appropriate, updated biannually in response to harms data. Complaints submitted to authorities should also provoke independent investigations by Access Canberra. 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.

The types of licence conditions and increases in fees for liquor licences in Sydney CBD and King Cross precincts should be used a model for the types of conditions to be placed on licences within a declared zone.

Section 5: Proposals to reduce regulatory burden

Proposal (5)(a): Reviewing responsible service of alcohol (RSA) competency in the ACT

1. Should consideration be given to changing the RSA training requirements to accept a nationally recognised course, thereby allowing RSA training completed in other jurisdictions to be recognised in the ACT?

A uniform approach to RSA training is supported.

2. If so, should consideration be given to Access Canberra preparing a document that sets out the main obligations and offences specific to the ACT and making this available to staff on the Access Canberra website? Or is it considered that a more substantive requirement is needed to ensure that staff are sufficiently educated?

It is important for RSA training to be streamlined and consistent. It is important that mechanisms are in place to ensure that quality and effectiveness of the RSA training provided. It also must adequately ensure that those who require RSA certification in the ACT remain fully aware of their responsibilities under the Act. Any guidelines or short courses that are provided must not diminish quality the training. For instance, in NSW the Office of Liquor Gaming and Racing (OLGR) has restricted some forms of online training that only require a very short period of time for the participant to pass the course.

Proposal (5)(b): Amend licence terms

1. Should consideration be given to allowing for three-year term licences and removal of the

standard licensing date?

The length of a licence for three years is supported in principle. However it is essential that during the three years, the Minister and Commissioner have the ability to add or change conditions to a liquor licence if necessary. In such circumstances where a serious incident or breach occurs, the presumption should be that the licence duration reverts back to a one year duration for the next three years.

The requirement for an annual licence fee should remain in place. Staggering of licence expiry dates has the potential to ease the regulatory burden.

Proposal (5)(c): Removal of restriction on clubs, without gaming machines, to only sell liquor to members and guests

1. Should consideration be given to removing the restriction on clubs, without gaming machines, to sell liquor to members and guests?

Removing the restriction on clubs without gaming machines is not supported. If the intention of a club licensee is to trade without these restrictions then the appropriate on-premise licence should be sought.

Caution should also be given to providing exemptions to licensees. It is essential that reducing the regulatory burden does not result in an increase in harms.

Proposal (5)(d): Removal of the offence for a club to advertise for public attendance

1. Should the offence for a club to advertise for public attendance be removed?

Removing the offence for public attendance is not supported. If the intention of a club licensee is to advertise for public attendance then the appropriate on-premise licence should be applied for.

The potential risk of this over time is that the smaller community focused clubs will morph into a large venue with higher volumes of alcohol supplied to patrons – where this becomes the primary business model focus and the small local community focus is lost.

Proposal (5)(e): Removing the requirement for maintaining an incident register for specific licence types/venues

1. Should consideration be given to removing the requirement for maintaining an incident register for specific licence types/venues?
2. If so, what licence types/venues should be considered (for example, licences with an occupancy loading of less than 100 or venues operating within standard trading hours)?

The following is in response to questions 1 and 2.

Alcohol is a harmful product and since there are significant risks associated with selling and supply it, licensees have an obligation under the law to ensure that they comply with the legislation. All licensees should be subject to maintaining an incident register.

For venues that are considered 'low risk' the current regulatory burden should be minimal as the number of incidents requiring reporting should be low. While penalties are imposed on licensees for failure to maintain an incident register, consideration should also be given to imposing conditions on a licence to

reduce risk of further incidents. If a three strikes system was in place, a venue with a third strike would therefore incur conditions being imposed to reduce risk.

Proposal (5)(f): Reduce the number of signs licensed premises must display

1. Should consideration be given to reducing the number of signs that need to be displayed?
2. What signs should remain?
3. What signs are appropriate for removal and why?

Any changes to the requirement of the number of signs for display should ensure that it is in line with harm minimisations provision under the Act.

Proposal (5)(g): Reviewing prescribed requirements in the Liquor Regulation 2010

1. Should consideration be given to reviewing the prescribed requirements in the Liquor Regulation?
2. If so, what are your views on the proposals outlined above?

The following is in response to questions 1 and 2.

Any consideration to reviewing prescribed requirements in the *Liquor Regulations* should ensure that it is in line with harm minimisations provision under the Act. Any changes to provision with the Liquor Regulations should ensure that there is a net benefit to the public health and safety for the removal of regulations.

3. Are there any other provisions that should be reviewed, why?

NAAPA has outlined provisions for review under the *Liquor Regulations* in its submission to the *Issues paper: Addressing alcohol harms*. These include changes to trading hours, strengthening the regulation of promotions and improving data collection.

Proposal (5)(h): Streamlining approval processes for events

1. What opportunities exist for considering how the process for issuing liquor permits for an event interacts with other approval processes required for the event?

Any changes to streamline the issuing of liquor permits should ensure that these are in line with the Act's harm minimisation provision.

Section 6: Proposals for regulatory improvements

Proposal (6)(a): Power for the Commissioner for Fair Trading to modify licence conditions and occupancy loadings, and request amendments to Risk Assessment Management Plans at any time

1. Should there be a power for the Commissioner for Fair Trading to modify licence conditions at any time provided there is an obligation to consult with licensees and that licensees have the ability to seek review of the decision?
2. Should the Commissioner for Fair Trading be able to require the amendment of a RAMP to address changes?

The following information addresses question 1 and 2.

The Commissioner should be provided the power to impose conditions on-licence premises at any time.

In NSW the Director General has the power to:

- impose, vary or revoke liquor licence conditions
- impose lockouts
- restrict or prohibit the sale of certain alcoholic products and
- restrict or prohibit the “undesirable promotion” of alcohol.

This model should be adopted to ensure that increased harm minimisation practices are applied to licences that classified as high risk. Conditions applied to licensed premises should be informed by the number of incidents associated with the venue, the compliance history and the complaints received from the public.

ACT Police should also have the power to recommend to the Commissioner that certain licensees should also have conditions applied. Any changes imposed by the Commissioner should be reflected in the RAMP.

1. Are there other measures, in addition to appropriate administrative appeal rights, that need to be considered as part of such an arrangement?

Maintaining these administrative appeals rights is appropriate mechanism for this proposal.

Proposal (6)(b): Clarify the distinction between licence subclasses

1. Should consideration be given to clarifying the distinction between licence subclasses?
2. What approaches would be considered appropriate to achieve this?

The following is in response to questions 1 and 2.

Consideration needs to be given to clearly defining licence subclass.

There are instances in NSW where venues have changed their primary purpose due to the loophole in the legislation. There are examples of restaurants changing into small bars using the Primary Service

Authorisation application. This has meant that changes have occurred that did not require any community impact scheme assessment. The risk associated with this is that over time a cluster of restaurants has the potential to turn into a cluster of small bars which would have substantial impact on the safety and amenity of the surrounding neighbourhood.

If an on-licence premise wishes to change its operation to have its primary purpose being to sell alcohol, then an appropriate liquor licence application would need to be submitted.

Clearly defining the purpose and obligations of each licence subclass in the legislation is required.

Proposal (6)(c): Extension of presumption of liquor to prosecutions under the Act and disciplinary actions

1. Should consideration be given to amending the Liquor Act to provide that the presumption that a substance is liquor applies in proceedings for all offences under the Act?

Consideration should be given to amending the Act to provide that the presumption that a substance is liquor applies in proceedings for an offence. This will bring the ACT in line with other jurisdictions.

In NSW, Police and OLGR officers complain of the substantial administrative burden and the weaknesses in the law in successfully achieving a prosecution for a licensee “allowing intoxication on-premises” and serving intoxicated patrons. The time and cost in preparing a brief and prosecuting an offender in court is disproportionate to the penalty, if any, that is imposed.

Another significant complaint from the same officers is the inconsistent approach by the court to intoxication offences by licensed premises. All too often they indicate that blatant offenders are let off with a caution or found guilty but no offense is recorded against the accused (s10 NSW Crimes Act). Even some repeat offenders appear to be treated with a high degree of leniency by some magistrates.

The above NSW concerns can inform the ACT law reform process to ensure its RSA-related provisions are much more streamline and effective in preventing alcohol harms and providing effective deterrence against non-compliance.

Proposal (6)(d): Insert a provision dealing with evidentiary certificates to be used in court proceedings

1. Should the Act include a provision dealing with evidentiary certificates to be used in court proceedings?

Including a provision in the Act that supports and assists the timely and efficient prosecution of all commercial promoters and suppliers of alcohol who breach the Act.

Proposal (6)(e): Strengthening incident reporting requirements

1. Should consideration be given to strengthening incident reporting requirements?

Proper incident reporting involves recording of an incident as soon as is reasonably possible after the actual event, not waiting until the next day or week.

Failure to properly record an incident, without a convincing defence, should be an automatic offence that counts towards subsequent disciplinary action.

Proposal (6)(f): Require independent alcohol supervisors at venues with powers to make decisions about early closing

1. Should consideration be given to requiring independent alcohol supervisors at for certain licence types/specific venues based on risk profile?
2. If so, what powers or functions should this position hold?
3. Alternatively, should consideration be given to adopting the model of a 'drink marshal' used in other jurisdictions?
4. If so, what role should these positions have?

Preventing intoxication at licensed venues relies on the application and enforcement of the *Liquor Act 2007* (Act). Responsible Service of Alcohol (RSA) is the main tool under the Act to prevent intoxication and involves educating staff of signs of intoxication, laws and regulation in relation to serving alcohol to intoxicated persons, legal liability, strategies for dealing with intoxicated persons and ways of refusing service to intoxicated persons.

However, RSA has been largely ineffective at preventing intoxication at licensed premises. A survey of young adults in 2011 by the BOCSAR found RSA applied to very few young people reporting at least one sign of intoxication (such as loss of coordination or slurred speech). Only 7.1 per cent were refused service and only 4.2 per cent were asked to leave the premises.²¹ Convictions for selling alcohol to intoxicated patrons are also rare, making up a minority of liquor law breaches.²²

This ineffectiveness of RSA and other harm minimisation provisions within the Act is reflected in the conflicting Objects of the Act of business interests and harm minimisation. There is also little evidence to demonstrate that 'RSA marshals' have made a demonstrable improvement to prevent intoxication and ensure compliance with RSA legal obligations on premises.

The barriers to the effectiveness of RSA are:

- the risk of enforcement is low
- staff receive insufficient training in the identification of intoxication
- staff fear confrontation and want to avoid conflict and
- staff are often young and drink heavily themselves, and so identify with patrons and can have personal relationships with patrons.²³

Challenges also exist with the enforcement of liquor legislation, an analysis of liquor licensing in Australia highlighted that "dealing with intoxication, both conceptually and practically, is one of the most challenging issues for police".²⁴

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.²⁵

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".²⁶

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.²⁷ 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 the ACT.

At a minimum the Commissioner should impose licence conditions including alcoholic drink restrictions (such as 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 for on-licence premises (including RSA marshals, no drink stockpiling by patrons, and ceasing the 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.

Proposal (6)(g): Amend the timing of reporting of liquor sales by off licences

1. Should consideration be given to amending the timing of reporting of liquor sales by off licences?
2. If so, is the proposal identified above (i.e. requirement to report no later than one month after of the end of the financial year) considered appropriate? If not, what is considered an appropriate timeframe?

The following addresses question 1 and 2.

Consideration needs to be given to the timing of reporting of liquor sales by off-licence premises to ensure that data collection is timely and accurate in the reporting of alcohol sales. If the proposed changes to data reporting allow for the collection of more regular and up to date data, then Access Canberra should have access to this.

Proposal (6)(h): Alcohol-free places

1. Should the approach to prescribing permanent alcohol-free places in the Regulation be amended?

Consideration should be given to the way that WA prescribes alcohol free zones. The principle being that all public places are alcohol free and it is then prescribed where alcohol can be consumed in public.

Proposal (6)(i): Clarifying obligations in relation to consumption of liquor off premises

1. Should clarity be given to the obligations of licensees in relation to patrons taking liquor away from the licensed premises?
2. If so, what is the best way to achieve clarity (i.e. imposing offences for licensees or patrons or through occupational discipline)?

The following is in response to questions 1 and 2.

It is important that measures are in place to prevent alcohol-related harms, including those occurring outside licensed premises. This includes a simplified system of regulation and enforcement that effectively prevents patrons removing alcohol from licensed premises in open containers, to prevent such public drinking.

The primary onus must fall on the licensee and staff of the venue to have safe operation systems in place and due diligence (such as supervision and clear signage) to prevent this removal from occurring.

There should be a particular strict liability offense for a venue for allowing this to occur, as well as on overall failure to maintain a safe operational system. Repeated offences would also attract disciplinary action.

Section 7: Miscellaneous proposals

Proposal (7)(a): 'Remote' sale of alcohol

1. Is it necessary to legislate further to impose additional obligations on licensees selling liquor online aimed at preventing minors from accessing alcohol in this way?
2. If so, what measures could be adopted?

The following is in response to questions 1 and 2.

It is essential that all online liquor sales have stringent proof of age in place at both the point of purchase and point of delivery. Licensees selling alcohol online should also be required to undertake the necessary RSA training to ensure their responsibilities.

Consideration should be given to the model in NSW where liquor licences that sell alcohol online are subject to regular reviews to ensure they follow new technological developments. This form of supply also appears to lend itself to CPOs to ensure licensees are not supplying alcohol to minors.

Proposal (7)(b): Mandating the provision of non-alcoholic and low-alcoholic options

1. Should the liquor legislation mandate the availability of low and non-alcohol beverages?
2. If so, should this apply to all licence types?
3. If so, is the proposal outlined above (prescribing this as an additional condition on a licence in the Regulation) considered appropriate, or is there another way this could be implemented?

The following is in response to questions 1 to 3.

The requirement to mandate the availability of low and non-alcohol beverages within the regulations should occur. This would be considered a reasonable measure to ensure that patrons are able to easily access water as a harm mitigation strategy. This should be applied to all on-licence premises.

A minimum hospitality requirement is that licensees should provide water upon request to a patron. Non-alcoholic and low alcohol drinks should be provided and promoted in all on-licence premises, and (except in the case of water, where adequate supplies of free water should be available) these should be priced considerably lower than that of alcohol beverages to encourage their consumption.

Proposal (7)(c): Identification scanners

1. Should consideration be given to implementing ID scanning in the ACT and if so, in what circumstances should it be required or used?

There is little evidence to support ID scanners as effective alcohol harm prevention tools, just like CCTV. However police in a number of jurisdictions identify that the combination of in-house linked ID scanners and CCTV does provide a good crime detection tool with some but less deterrence value.

ID scanners should be considered for high risk venues. An important requirement to enhance the security value of such measure is the linking of scanners between venues to ensure consistency across licensed premises is applied in regards to barred patrons.

It is important to note that these measures should not substitute evidence-based control policies, such as reducing late night trading and should be implemented to support these harm prevention measures. The introduction of ID scanners should be at no cost to the community. It also requires proper privacy protection and safeguards.

Proposal (7)(d): Closed circuit television (CCTV) for licensed premises

1. Should the Liquor Act include a requirement for CCTV for some licensed premises?
2. If so, should CCTV requirements apply to:
 - a. licensed premises in specific entertainment precincts, such as the City, where alcohol-related violence or anti-social behaviour is prevalent or
 - b. particular types of licensed premises (i.e. those trading outside standards hours) or
 - c. individual licensed premises based on their risk profiles (i.e. having regard to incidents in or near the premises)?

The following is in response to questions 1 and 2.

Consideration should be given to the statutory requirement for approved CCTV systems in designated special zones and individual premises associated with high risk and/or harms. It is important to note that research has found that CCTV has limited substantive crime prevention value. However, they do provide for crime detection.

3. What standards should apply for the operation of CCTV to those licensed premises which have CCTV (mandated or not)?

Consideration should be given to the NSW model in determining standards for the operation of CCTV. NSW has developed technical standards relating to quality of recordings, the scope and coverage of detection and time dating. The creation of high standards supports a higher degree of admissibility of the footage in court.

4. Should consideration only be given to imposing standards as opposed to mandating the use of CCTV by some licensed premises?

Regulation of CCTVs is essential to ensure a level playing field and that authorities can rely upon high quality footage to discharge their responsibilities and bring matters successfully before the court.

Proposal (7)(e): Wall mounted breathalysers

1. Should consideration be given to mandating the availability of Alcohol Breath Testing units?

Consideration should not be given to mandating alcohol breath testing units. While this measure may assist in determining a patron's intoxication levels it should not be seen as a harm reduction measure.

Proposal (7)(f): Strengthen consideration of impact on nearby premises, places of worship, hospitals or schools

1. Should consideration be given to strengthening consideration of the impact on nearby premises, places of worship, hospitals or schools when determining licence applications?
2. If so, is the addition of 'annoyance' as a factor an appropriate proposal, or is there another way this could be achieved (i.e. a specific reference to considering the welfare of children)?

The following information is in response to questions 1 and 2.

Consideration should be given to strengthening the assessment that determines the impact of a liquor licence on the community. The inclusion of a social impact assessment for liquor licences is needed to ensure that new liquor licences or amendments made to existing liquor licences do not have negative impacts on the community.

A social impact assessment should be a considered process and not just an automated form, it should be focused on relevant circumstances not a pro-format defined set of data, and it should be credible so that people can have confidence in the decisions that the public authority makes.

Considerations that need to be included in a social impact assessment include but are not limited to the number of existing liquor licences in an area, vulnerable population groups, indicators of harm, the discount effect that is occurring in the area as a result of clustering. It is also important that every application is considered unique and not the same.

A social impact assessment should also consider the factors such as the "amenity", "undue disturbance", "welfare", annoyance" and "inconvenience" which would all be encompassed under the broad definition of "alcohol-related harms" that also carries with it the temporal (current and future risks) elements articulated in *Kordister*.

Proposal (7)(g): Statutory right to refuse entry and evict intoxicated people

1. Are statutory rights to refuse and evict intoxicated people, in addition to common law rights, necessary?
2. Are additional obligations on licensees to prevent intoxication on their premises necessary?

The following is in response to questions 1 and 2.

Caution should be taken on relying on the reliance of the NSW Intoxication Guidelines as they significantly derogate from the licensee and staff of licensed premises to have an absolute or strict liability obligation to prevent intoxication on premises.

Having certain control mechanisms in place that are described in a Guideline will not guarantee that such measures are enforced.

It is essential that the liability is placed on the licensee and staff of licensed premises in the ACT to ensure effective systems are in place to prevent alcohol-related harms, fairly putting the onus and responsibility back on them to ensure and maintain the safety, health, welfare and amenity of patrons and the community in respect for the promotion, supply, sale, service and consumption of alcohol in the ACT.

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