

**FARE's Submission to the *Review of the  
Liquor Licensing Act 1990 (Tasmania)*  
*Proposals Paper***

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September 2014

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## About the Foundation for Alcohol Research and Education

The Foundation for Alcohol Research and Education (FARE) is an independent, not-for-profit organisation working to stop the harm caused by alcohol.

Alcohol harm in Australia is significant. More than 5,500 lives are lost every year and more than 157,000 people are hospitalised making alcohol one of our nation's greatest preventative health challenges.

For over a decade, FARE has been working with communities, governments, health professionals and police across the country to stop alcohol harms by supporting world-leading research, raising public awareness and advocating for changes to alcohol policy.

In that time FARE has helped more than 750 communities and organisations, and backed over 1,400 projects around Australia.

FARE is guided by the World Health Organization's *Global Strategy to Reduce the Harmful Use of Alcohol*\* for stopping alcohol harms through population-based strategies, problem directed policies, and direct interventions.

If you would like to contribute to FARE's important work, call us on (02) 6122 8600 or email [fare@fare.org.au](mailto:fare@fare.org.au).

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\* World Health Organization (2010). *Global strategy to reduce the harmful use of alcohol*. Geneva: World Health Organization.

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## Summary

The Foundation for Alcohol Research and Education (FARE) welcomes the opportunity to provide a submission to the *Review of the Liquor Licensing Act 1990 - Proposals Paper* (Proposals Paper). FARE provided a submission on the *Review of the Liquor Licensing Act 1990 Discussion Paper* in December 2013 and this submission should be seen as a supplement to it. A copy of FARE's submission is enclosed.

This Review is important because alcohol remains a significant cause of harm in Tasmania. In 2011/12, Tasmania had the third highest rate of risk for long term alcohol harm for adults (22.7%), higher than for Australia as a whole (19.5%). Likewise, Tasmania was ranked third for short term harm in the same period with almost half of Tasmanian adults (48.9%) consuming alcohol to risky levels for acute harms on at least one occasion, compared to Australians as a whole (44.7%).<sup>1</sup>

The impact of this harm is reflected in alcohol-related emergency department presentations in Tasmania which had increased by 27% between 2005/06 and 2011/12, and represent over 30% of all Mental Health and Alcohol and Drug Services emergency department presentations during that time.<sup>2</sup> In reporting on Tasmanian alcohol data and trends in 2013, the Department of Health and Human Services concluded that "with harmful alcohol consumption continuing to be a major contributor to the burden of disease, the public interest case for supporting concerted efforts in areas such as alcohol harm reduction is stronger than ever."<sup>3</sup>

The regulation of alcohol and the associated liquor licensing processes are critical elements that contribute to a safer and healthier community. FARE's submission welcomes proposals to make changes to the *Liquor Licensing Act 1990* that will strengthen assessment activities so that they prioritise the safety and wellbeing of the community. Examples include providing powers to the Licensing Board to apply conditions to licenses and permits, managing access to alcohol by defining intoxication and developing indicators, and the ability to be able to prohibit or restrict alcohol promotions that are harmful or irresponsible.

However, FARE considers that some of the proposals need to be made stronger or reconsidered. For example, FARE welcomes the introduction of an objectives provision but argues that harm minimisation should be the primary object of the Act and any other objectives should be subordinate to this. Likewise, a community impact statement is also important but it should apply to all licence applications, not just those that are high risk. Tasmania should recognise the limitations of existing processes in other states and territories to develop a more effective model.

Furthermore, FARE is concerned that the Proposals Paper does not address some significant measures that are important in developing a comprehensive approach to regulating the sale and consumption of alcohol and minimising related harm. The most critical omission relates to changes to reduce trading hours, leaving venues still able to trade 24 hours a day. Other actions that are missing from the Proposals Paper include greater consumer engagement and enhanced compliance activities through controlled purchase operations and public disclosure of venues that fail to meet their obligations under the Act.

This submission emphasises the need for all liquor licensing decisions to be made in the context of the evidence on minimising alcohol harm with consideration given to the potential impact on the health and amenity of local communities. This can best be achieved by enabling all stakeholders to contribute to the process, including police, law enforcement agencies, local communities, local government and the public.

The sale and consumption of alcohol creates a risk of alcohol harm and therefore the conditions for obtaining a licence or permit and the assessment of those applications should be stringent. This submission calls for the Tasmanian Government to take the opportunity to create legislation that leads the country in regulating the sale, supply and promotion of alcohol in a manner that is consistent with minimising alcohol harm.

## **This submission**

The approach taken by this submission is to respond to each of the proposals outlined in the Proposals Paper and indicate FARE's support, partial support and recommendation. The numbering and sequencing of proposals will follow that used in the Proposals Paper.

## Recommendations

1. That the *Liquor Licensing Act 1990* should be amended to include an objectives provision where:
  - the primary Object should be minimisation of alcohol harm;
  - any other Objects should be subordinate to the primary Object of harm minimisation; and
  - a secondary Object be included which regulates the sale, supply and promotion of alcohol in a safe and responsible manner that is consistent in achieving the primary objective of minimising alcohol harm.
2. That responsible development of the industry is clearly defined.
3. That the liquor regulations are amended to set out matters that the Licensing Board or Commissioner for Licensing will have regard to in determining the 'best interests of the community'.
4. That a community impact statement process be introduced for all liquor licences and high risk permit applications.
5. That a definition of high risk is specified in the regulations.
6. That the community impact assessment process requires all licence and high risk permit applicants to meet the following requirements:
  - applicants must assure the Commissioner that granting their application for a licence or permit is in the best interests of the community;
  - applicants must substantiate and verify their public interest assurances with evidence;
  - applicants must include information on local alcohol-related hospitalisation, crime and assaults data; and
  - applicants must list other licensed premises in the local area and their proximity to the location of the applicant's proposed premises.
7. That the *Liquor Licensing Act 1990* should be amended to adopt clear criteria for determining if an applicant is fit and proper to hold a licence or permit. This should include requiring applicants for all licences and permits to successfully complete and hold current certificates of training and assessment in management of licensed premises and in the safe and Responsible Service of Alcohol.
8. That the *Liquor Licensing Act 1990* be amended to apply a 'fit and proper' test to all licence and permit applications.
9. That the *Liquor Licensing Act 1990* be amended to include an ongoing requirement for licensees to demonstrate on an annual basis that they remain fit and proper.
10. That the *Liquor Licensing Act 1990* be amended to require licensees to complete Responsible Service of Alcohol training every five years.

11. That licensees are held responsible for ensuring that employees have completed the required Responsible Service of Alcohol training and that these qualifications are up-to-date.
12. That the requirement for all licensees, permit holders, and their staff who serve alcohol to others to hold current Responsible Service of Alcohol qualifications be adequately enforced.
13. That the *Liquor Licensing Act 1990* be amended to include a risk-based licensing fee system that, as a minimum, offsets the cost of alcohol harm borne by government and the community. Criteria established for the development of the scheme should be based on, as a minimum, trading hours and occupancy.
14. That the *Liquor Licensing Act 1990* be amended to give power to the Board and Commissioner to apply conditions to all licence and permit types such as 3am last drinks and 1.30am lockouts.
15. That the *Liquor Licensing Act 1990* be amended to provide for an appeals process that will allow for appeals both for and against conditions being made on a licence.
16. That the *Liquor Licensing Act 1990* be amended to introduce mandatory Responsible Service of Alcohol licence conditions for all new and existing on-licence venues including:
  - sales of shots, mixed drinks with more than 30mL of alcohol and ready mixed drinks stronger than five per cent alcohol by volume are prohibited after 10.00pm;
  - sales of more than four drinks to any patron at one time are prohibited;
  - sales of alcohol mixed with energy drinks are prohibited after midnight;
  - a supervisor must be on the premises from 11.00pm until closing with the sole purpose of monitoring Responsible Service of Alcohol practices;
  - patrons are not to be allowed to stockpile drinks; and
  - the sale of alcohol must cease 30 minutes prior to closing time.
17. That if the proposal to maintain separation between the planning and development and the liquor licensing processes is adopted, clear lines of responsibility and open communication channels are established or enhanced, to ensure that all relevant issues are considered in the decision making process and there is an understanding of the deliberations undertaken as part of the other process.
18. That open and transparent communication processes are formalised between the regulators and local government to ensure that all local governments understand the licensing process and their ability to participate in that process.
19. That regulators also develop and/or maintain dialogue with police, public health providers, emergency services personnel and the community.

20. That the *Liquor Licensing Act 1990* be amended to:
  - replace the term drunk with intoxicated, interpreted to be someone affected by alcohol or some other substance.
  - clearly describe indicators of intoxication.
21. That the proposal be adopted to develop guidelines identifying intoxication and how it can be determined and include these in the Responsible Service of Alcohol training course.
22. That the *Liquor Licensing Act 1990* be amended to prohibit minors from the sale, supply, service, control or possession of alcohol.
23. That the *Liquor Licensing Act 1990* be amended to give the Commissioner power to prohibit or restrict the irresponsible advertising and promotion of alcohol.
24. That detailed criteria for determining prohibited and restricted alcohol promotions be established and regulated. This should include advice regarding actions that licensees can take to reduce the risks associated with alcohol promotions.
25. That criteria for determining prohibited and restricted alcohol promotions should:
  - address promotions conducted at on and off-licence premises with equal weight;
  - set a minimum price for alcohol at one dollar per standard drink;
  - declare 'Shopper docket' (liquor promotion vouchers on the receipts for purchases) a prohibited promotional activity;
  - prohibit point of sale promotional materials for liquor (e.g. 'happy hours', free gifts with purchase, prominent signage, competitions, price discounts for bulk purchases, and sale prices) from being displayed on and around licensed premises where minors are likely to be present; and
  - prohibit alcohol promotions from being placed on state and local government property.
26. That the *Liquor Licensing Act 1990* be amended to reduce standard trading hours to 10.00am-12.00am for all new and existing on-licences and permits (except for out-of-hours permits).
27. That extended trading hours for all new and existing on-licences with out-of-hours permits be reduced to 12.00am-3.00am, with lockouts no later than 1.00am.
28. That the *Liquor Licensing Act 1990* be amended to reduce standard trading hours to 10.00am-10.00pm for all new and existing off-licences.
29. That consideration of outlet density be required by the Licensing Board as part of the assessment of applications for a liquor licence.



30. That the Commissioner of Police, local government authorities and the Commissioner for Licensing be given the power to declare liquor outlet saturation zones in areas of Tasmania that are identified as having too many licensed premises and/or too many associated alcohol-related problems and that within these zones, a moratorium should be placed on all new licences.
31. That the *Liquor Licensing Act 1990* be amended to grant special powers to the Minister responsible for alcohol control to prohibit alcohol products on the basis of clear criteria.
32. That the criteria to be used by the Minister for assessing whether an alcohol product should be prohibited be articulated in regulations.
33. That the following be removed from the proposal: ‘and the Minister has consulted with liquor industry representatives and the manufacturer (if known).’
34. That members of the public be allowed to make representations to seek prohibition of an alcohol product.
35. That the *Liquor Licensing Act 1990* be amended to require the provision of free drinking water in licensed premises and that all licensed premises be required to meet this condition.
36. That the *Liquor Licensing Act 1990* be amended to allow mandatory collection of standardised alcohol sales data from wholesale and producer liquor licence holders that is consistent with the data requirements under the National Alcohol Sales Data Project.
37. That alcohol sales data collected from wholesale and producer liquor licence holders be publicly reported.
38. That data should be collected on the volume in litres of beer, wine, cask wine, fortified wine, spirits, pre-mixed spirit-based drinks, and cider sold in the previous financial year.
39. That the proposal for Tasmania to participate in the National Alcohol Sales Data Project be adopted.
40. That the *Liquor Licensing Act 1990* be amended to create offences for licensee obligations and ensure compliance and enforcement by licence and permit holders.
41. That the *Liquor Licensing Act 1990* be amended further to include provision for the authorities to have the power to swiftly and consistently impose meaningful sanctions for premises who contravene the Act. These powers should include on the spot 24 hour closures.
42. That funding for the proposal to support responsible service and consumption of alcohol initiatives be achieved by using revenue generated by a risk-based licensing system to provide certainty and consistency of funding.

43. The *Liquor Licensing Act 1990* be amended to provide members of the public with more opportunities to participate and provide input in licensing matters, such as the submission of complaints that may initiate disciplinary action.
44. The *Liquor Licensing Act 1990* be amended to introduce controlled purchase operations to identify and prosecute licensees found to be selling alcohol to people under the age of 18 years.
45. The existing secondary supply laws found under section 71 of the *Liquor Licensing Act 1990* and section 26 of the *Police Offences Act 1935* be amended to either collate the laws under one Act or alternatively:
  - the secondary supply provisions under the *Liquor Licensing Act 1990* should note the relevant secondary supply offence provisions under the *Police Offences Act 1935*, and
  - the *Police Offences Act 1935* should note the secondary supply provisions under the *Liquor Licensing Act 1990*
46. The *Liquor Licensing Act 1990* be amended to require the Commissioner and the Police to publicly report on compliance activities relating to the Act, including the number of venues inspected and their location, the times of day that these venues were inspected and the number of identified breaches of compliance.

# FARE's response to the proposals

## Objectives of the Liquor Licensing Act

**1 Amend the Act to introduce an objectives provision. These objectives would include: regulation, harm minimisation and responsible development of industry.**

FARE supports the proposal to introduce an objectives provision to the *Liquor Licensing Act 1990 (the Act)*, but rejects the approach suggested in the Proposal Paper. The primary objective of the Act should be to minimise harm from alcohol since alcohol is a psychoactive substance that has the potential to cause harm, hence the need for regulation and control. This objective should be elevated above all other objectives of the Act, so that it is the primary consideration in decision making relating to the sale and supply of alcohol. Business objectives proposed, such as the 'responsible development of the industry', should not be equal to or elevated above a harm minimisation objective and should be clearly defined.

### Recommendations

1. That the *Liquor Licensing Act 1990* should be amended to include an objectives provision where:
  - the primary Object should be minimisation of alcohol harm;
  - any other Objects should be subordinate to the primary Object of harm minimisation; and
  - a secondary Object be included which regulates the sale, supply and promotion of alcohol in a safe and responsible manner that is consistent in achieving the primary objective of minimising alcohol harm.
2. That responsible development of the industry is clearly defined.

## The licensing process

### *Best interests of the community*

**2 Amend the liquor regulations to set out matters that the Licensing Board or Commissioner for Licensing will have regard to in determining the "best interests of the community".**

FARE supports the proposal to amend the liquor regulations to set out matters that will be considered in determining the 'best interests of the community'. The 'best interest of the community' should be clearly defined for ease of interpretation by the Licensing Board or Commissioner. Minimising harm from alcohol should be used to determine the best interests of the community. Clearly articulated objectives of the Act, which elevate harm minimisation as the primary objective, will provide a clear guide to decision makers on the intention of the Act. The regulations should also clearly specify what constitutes the best interest of the community.

## Recommendation

3. That the liquor regulations are amended to set out matters that the Licensing Board or Commissioner for Licensing will have regard to in determining the 'best interests of the community'.

### **3 Provide for a community impact statement process for liquor licence or permit applications deemed by the Commissioner to be high risk.**

FARE supports the introduction of a community or social impact process for liquor licence and permit applications. However, a community impact statement should be applied to all licence applications rather than just those that are deemed to be high risk, with clear guidance available to applicants on what might be considered high risk.

The proposal does not specify how the community impact statement process will be developed and what the requirements for liquor licensees, community members and other interested stakeholders will be. Responsibility should fall on the licensee to prove that their licence will not negatively impact on the community. It is important that this process does not result in the burden of proof being placed on the community to prove that the licence is not in the best interests of the community.

There are significant weaknesses with existing community impact statement systems across Australia, which should be considered in the development of the Tasmanian process. For example, in New South Wales, shortcomings of the community impact statement process include:

- inadequate consultation with the community;
- onus for proof of harm is on the community;
- no reflection of harm minimisation principles in the process; and
- dependence on an individual's ability to be transparent and honest through the process.

The proposal to apply community impact statements to high risk applications only will further weaken a process that has already been shown to have shortcomings in other states and territories.

FARE recently released a book on liquor licensing in Australia called *Stemming the tide of alcohol: liquor licensing and the public interest*.<sup>4</sup> Chapter 8 by Alison Ziller covers social impact assessments and considers some of the key issues for good decision making about alcohol-related decisions. Specifically it refers to some of the shortcomings of consultation processes in other jurisdictions and suggests ways to overcome these.

Tasmania should acknowledge the weaknesses of existing processes elsewhere and ensure that the Tasmanian process offers a more robust approach that will ensure the best interests of the community are achieved. The community impact statement must apply to all licence applications and provide for an objective, evidence based process where there is adequate community consultation. The onus of proof should be placed on the industry to demonstrate that there will be no increase in alcohol harm to the community arising from the new licence.

## Recommendations

4. That a community impact statement process be introduced for all liquor licences and high risk permit applications.

5. That a definition of high risk is specified in the regulations.
6. That the community impact assessment process requires all licence and high risk permit applicants to meet the following requirements:
  - applicants must assure the Commissioner that granting their application for a licence or permit is in the best interests of the community;
  - applicants must substantiate and verify their public interest assurances with evidence;
  - applicants must include information on local alcohol-related hospitalisation, crime and assaults data; and
  - applicants must list other licensed premises in the local area and their proximity to the location of the applicant's proposed premises.

### **Qualifications for a liquor licence**

#### **4 Update information to applicants to include an explanation of the criteria used to assess “fit and proper”.**

FARE supports the adoption of clear criteria for determining if an applicant is fit and proper to hold a liquor licence or permit. Licence and permit applicants should be assessed on whether they are qualified and suitable to hold the licence or permit they apply for. These should be assessed on a regular basis to ensure that licence and permit holders remain ‘fit and proper’. Such an assessment should be mandatory for all licence and permit applicants, regardless of whether the application is for a one-off event or for an authorisation to sell and supply alcohol on a routine and ongoing basis.

#### **Recommendation**

7. That the *Liquor Licensing Act 1990* be amended to adopt clear criteria for determining if an applicant is fit and proper to hold a licence or permit. This should include requiring applicants for all licences and permits to successfully complete and hold current certificates of training and assessment in management of licensed premises and in the safe and Responsible Service of Alcohol.

#### **5 Amend the Act to:**

- a. **Introduce a provision that the Commissioner may apply a fit and proper test to permit applicants.**
- b. **Introduce an obligation that licence and permit holders must notify the Commissioner when convicted of an offence in Tasmania or any other jurisdiction, and when there is a change relating to an associate, including a conviction relating to an associate.**
- c. **Introduce fit and proper as a matter that may be considered by the Commissioner in the cancellation, variation or suspension of a permit.**

FARE supports the introduction of a provision that enables the Commissioner to apply a fit and proper test for permit applicants. This will provide consistency between permits and licences since currently, the fit and proper test does not apply to permit applicants. However, FARE is concerned that the test

would apply only to high risk applications and not to *all* permit applications. A fit and proper test should be applied to all licence and permit applicants. While it is recognised that there is a cost associated with undertaking such a test, there are risks associated with any service of alcohol and therefore it is appropriate that all permit holders should be deemed to be fit and proper.

Furthermore, there should be an ongoing requirement to determine that licensees remain fit and proper. This should take a proactive approach to determining their status, rather than relying on the licensee to volunteer that information. People's circumstances change and they should be asked on an ongoing basis to provide that information. This could be achieved simply, as part of the process of paying their annual license fee, by asking licensees to declare whether anything has changed over the past year that might affect their eligibility to hold a licence. Examples of the type of information that should be provided include being convicted of an offence or changes in the fit and proper status of associates.

If someone is deemed not to be 'fit and proper' they should not be permitted to hold any form of licence.

### Recommendations

8. That the *Liquor Licensing Act 1990* be amended to apply a 'fit and proper' test to all licence and permit applications.
9. That the *Liquor Licensing Act 1990* be amended to include an ongoing requirement for licensees to demonstrate on an annual basis that they remain fit and proper.

### **6 Amend the Act to require the completion of Responsible Service of Alcohol training every five years with licensees responsible for ensuring that employees who serve alcohol have completed the required training.**

FARE supports this proposal to provide Responsible Service of Alcohol (RSA) training every five years and holding licensees responsible for ensuring that employees have completed the training. FARE also emphasises the need for adequate enforcement of the requirement to have up-to-date RSA qualifications for all licensees, permit holders, and their staff who serve alcohol to others.

### Recommendations

10. That the *Liquor Licensing Act 1990* be amended to require licensees to complete Responsible Service of Alcohol training every five years.
11. That licensees are held responsible for ensuring that employees have completed the required Responsible Service of Alcohol training and that these qualifications are up-to-date.
12. That the requirement for all licensees, permit holders, and their staff who serve alcohol to others to hold current Responsible Service of Alcohol qualifications be adequately enforced.

## Variable licence fees

### 7 Further explore moving to a risk-based fee system

FARE does not support the proposal to further explore a risk-based licensing fee system and instead asserts that Tasmania should commit to its introduction. Such a scheme was introduced in the Australian Capital Territory (ACT) in 2010 under the Liquor Act 2010 (ACT) and offers a good model for Tasmania to consider. A risk-based licensing system calculates licensing fees according to risk factors such as venue type, occupancy and trading hours. In so doing it helps to recover the policing and regulatory costs of alcohol-related incidents, with higher risk licensees paying more than lower risk ones. It may also provide an incentive to modify risk factors such as trading hours and occupancy. Risk-based licensing fee systems operate in other jurisdictions with New South Wales the most recent state to adopt this approach.

In the ACT, on-trade licensees pay a base fee according to venue type, with additional fees levied for each trading hour beyond midnight and occupancies greater than eighty patrons. For example, a nightclub trading until 5am with an occupancy level of more than 350 people pays \$25,184 per annum to renew their liquor licence. By contrast, a bar with the same occupancy levels and trading hours pays \$16,790 per annum to renew their liquor licence while a restaurant with the same conditions pays \$8,394 per annum. Shorter trading hours and smaller occupancies incur lower fees. For example, a night club trading until 1am with an occupancy level of between 80 to 150 people pays \$8,394 per annum to renew their liquor licence, a bar with the same occupancy and trading hours pays \$5,595, while a restaurant with the same conditions pays \$2,797.<sup>5</sup>

The annual licence renewal fees paid by off-trade licensees are based solely on the gross liquor purchase value for the annual reporting period. For off-trade licensees, renewal fees range from \$532 per annum for less than or equal to \$5,000 gross liquor purchased, to \$27,355 per annum for in excess of \$7,000,000 gross liquor purchased.<sup>6</sup>

The impact of risk-based licensing in the ACT has been positive. A study by Mathews and Legrand showed that there have been declines in the absolute number of all offences, including those involving alcohol, since the introduction of risk-based licensing in December 2010.<sup>7</sup>

Currently in Tasmania licensees pay an annual fee that varies according to the type of venue ie General, On, Off, Club etc. However, there is no provision for different trading hours or occupancy levels. The fees are considerably lower than those found in the ACT; for example the annual fee for an on-licence is \$584.60<sup>8</sup> compared to a bar in the ACT where the licence fee could be as high as \$16,790 per annum.

The Tasmanian Government should commit to a risk-based licensing system to recover some of the costs associated with administration of the Act, law enforcement, and services responding to alcohol harm such as ambulance call outs, emergency departments, social workers, drug and alcohol staff and treatment services.

### Recommendation

13. That the *Liquor Licensing Act 1990* be amended to include a risk-based licensing fee system that, as a minimum, offsets the cost of alcohol harm borne by government and the community. Criteria established for the development of the scheme should be based on, as a minimum, trading hours and occupancy.

## Licence and permit conditions

### 8 Amend the Act to:

**a. Provide the Board and Commissioner with the power to apply a range of conditions to all licence and permit types.**

**b. Provide an appeals process against the imposition of conditions by the Commissioner.**

FARE supports the provision of power to the Board and Commissioner to apply conditions to licences and permits. In addition, FARE supports making provision for the ability to apply common conditions across precincts.

NSW has introduced a range of measures to reduce alcohol harm which should be considered by Tasmania. Within the Sydney Central Business District Entertainment Precinct, measures include:

- 3am last drinks and 1:30am lockout for licences;
- temporary bans of 48 hours for troublemakers;
- a two year freeze on approvals for liquor licences;
- revoking competency cards and disqualifications for bar staff breaching RSA requirements; and
- licensee fines and strikes under the government's Three Strikes disciplinary scheme.<sup>9</sup>

In Newcastle, pub closing times were wound back from 5am to 3am (later 3.30am after a legal challenge by the pubs) and a lockout<sup>a</sup> introduced at 1am (later 1.30am). Additional restrictions on premises included:

- prohibition from 10.00pm of the sale of shots, mixed drinks with more than 30mL of alcohol, ready mixed drinks stronger than five per cent alcohol by volume and more than four drinks to any patron at one time;
- requirement for licensees to ensure that a supervisor is on the premises from 11pm until closing with the sole purpose of monitoring RSA; and
- cessation of sale of alcohol 30 minutes prior to closing time.

An appeals process should be part of this provision. However, the wording in part b of the proposal, to 'provide an appeals process *against the imposition* of conditions by the Commissioner' (FARE emphasis) implies that the only focus of the appeals process will be to consider an appeal by an applicant against conditions made on a licence. The appeals process should also allow for appeals by interested stakeholders in situations where they are concerned that the conditions do not go far enough, or that conditions should be imposed on a licence to adequately protect the health and safety of the community.

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<sup>a</sup> The lockout prevented new patrons from *entering* pubs after the specified time only; if people were already in a venue, the lockout did not prevent them from continuing to drink.



## Recommendations

14. That the *Liquor Licensing Act 1990* be amended to give power to the Board and Commissioner to apply conditions to all licence and permit types such as 3am last drinks and 1.30am lockouts.
15. That the *Liquor Licensing Act 1990* be amended to provide for an appeals process that will allow for appeals both for and against conditions being made on a licence.
16. That the *Liquor Licensing Act 1990* be amended to introduce mandatory Responsible Service of Alcohol licence conditions for all new and existing on-licence venues including:
  - sales of shots, mixed drinks with more than 30mL of alcohol and ready mixed drinks stronger than five per cent alcohol by volume are prohibited after 10.00pm;
  - sales of more than four drinks to any patron at one time are prohibited;
  - sales of alcohol mixed with energy drinks are prohibited after midnight;
  - a supervisor must be on the premises from 11.00pm until closing with the sole purpose of monitoring RSA practices;
  - patrons are not to be allowed to stockpile drinks; and
  - the sale of alcohol must cease 30 minutes prior to closing time.

## Role of local government

### **9 Maintain separation between the planning and development and the liquor licensing processes.**

The important issues in the assessment of applications by the planning and development and liquor licence and permit approval processes are the clear lines of responsibility and communication between the two processes. This is important to ensure that all relevant issues are considered and there is an understanding of the process that has been taken by the other body. It would also avoid situations where neither body conducts a thorough assessment of the alcohol-related risks posed by the application and assumptions being made about whether or not these risks have been ameliorated or considered negligible.

### Recommendation

17. That if the proposal to maintain separation between the planning and development and the liquor licensing processes is adopted, clear lines of responsibility and open communication channels are established or enhanced, to ensure that all relevant issues are considered in the decision making process and there is an understanding of the deliberations undertaken as part of the other process.

### **10 Continue dialogue between the regulators and local government to ensure that all local authorities understand the licensing process and their ability to participate in that process.**

FARE supports the need for continued dialogue between the regulators and local government to ensure that all local authorities understand the licensing process and their ability to participate in that process. Such dialogue should occur in an open and transparent manner.

The broader community should also have a role in the licensing process and likewise needs to be part of the discussion. Communities engage in licensing matters for a variety of reasons, the three most common include:

- an awareness of pre-existing alcohol-related problems in their local area;
- a common perception that these harms are at unacceptable levels and compromise the welfare of the local community and others; and
- a sense of injustice from inaction by authorities to prevent future harms or reduce existing levels of harms.<sup>10</sup>

Community engagement, participation and input is important for the responsiveness and accountability of licensing decisions in terms of the public interest. Details on how and when this process will occur needs to be formalised.

### Recommendations

18. That open and transparent communication processes are formalised between the regulators and local government to ensure that all local governments understand the licensing process and their ability to participate in that process.
19. That regulators also develop and/or maintain dialogue with police, public health providers, emergency services personnel and the community.

## Managing access to alcohol

### Intoxication

#### 11 Amend the Act to:

- a. Replace the term drunk with intoxicated, interpreted as someone affected by alcohol or some other substance.**
- b. Provide indicators of intoxication.**

FARE supports the proposal to amend the Act to replace the term drunk with intoxicated and to provide indicators of intoxication. Other jurisdictions around Australia define intoxication and there is some consistency between each of the Acts. The Victorian, *Liquor Control Reform Act 1998* defines intoxication as being when:

... [an individual's] speech, balance, coordination or behaviour is noticeably affected and there are reasonable grounds for believing that this is the result of the consumption of liquor.<sup>11</sup>

Defining the term intoxication within the Act will assist authorities to enforce RSA. The definition needs to be clear and measurable so that authorities are able to enforce the provisions under the Act.

As noted in our submission to the Review's Discussion Paper, defining intoxication is just one part of a broader strategy to prevent patron intoxication on licensed premises. Enforcement of RSA practices by the Licensing Commissioner and Tasmanian Police is essential.

## Recommendations

20. That the *Liquor Licensing Act 1990* be amended to:

- replace the term drunk with intoxicated, interpreted to be someone affected by alcohol or some other substance.
- clearly describe indicators of intoxication.

### **12 Develop guidelines to clearly outline the meaning of intoxication and how it can be determined and include in the RSA training course.**

FARE supports the proposal to develop guidelines on intoxication, acknowledging that application of the guideline will be a risk-based decision making process. Random checks by police are important in ensuring that licensees are fulfilling their obligations under the Act, noting that uniformed police inside licensed venues will limit the likelihood that irresponsible practices will be observed.

## Recommendation

21. That the proposal be adopted to develop guidelines identifying intoxication and how it can be determined and include these in the Responsible Service of Alcohol training course.

## *Employing young people where alcohol is sold*

### **13 Amend the Act to introduce an age restriction of 16 years to serve alcohol as part of employment. The current requirements for direct supervision and appropriate course accreditation to remain.**

FARE supports the introduction of an age restriction for serving alcohol as part of employment, however argues that staff should be at least 18 years of age. This would make the legislation consistent with most other states and territories which restrict people under the age of 18 from selling alcohol:

- In NSW, a minor is not allowed to sell, supply or serve alcohol on licensed premises.<sup>12</sup>
- In Victoria, a person under the age of 18 years is not permitted to serve alcohol on licensed premises and on any authorised premises, unless they are engaged in a training program approved by the Commission and is supplying the liquor in accordance with any conditions to which the Commission has determined that the training program is subject.<sup>13</sup>
- In the Northern Territory, a child is not permitted to sell or otherwise supply alcohol. There is provision for an exemption to be made upon application to the Commission, however this is rare.<sup>14</sup>
- The Western Australia *Liquor Control Act 1988* also prohibits minors from selling, supplying or serving alcohol, however minors are able to serve alcohol ancillary to a meal if they are 16 years or older, have the approval of the Director (the chief executive officer of the department of the Public Service that is 'principally' assisting in the administration of the Act), if they are supervised at all times *and* they are either doing so as part of, or following completion of, a prescribed training course that assessed their work in relation to serving alcohol with a meal where the meal is the primary activity.<sup>15</sup>

- In South Australia, minors are not allowed to be employed to serve alcohol in licensed premises.<sup>16</sup> The only exceptions are where the person is 16 years or older, a child of the licensee or person responsible for the premises and is either resident on the premises or approval has been given by the licensing authority.

### Recommendation

22. That the *Liquor Licensing Act 1990* be amended to prohibit minors from the sale, supply, service, control or possession of alcohol.

## Undesirable alcohol promotion and advertising

### **14 Amend the Act to provide the Commissioner with the power to prohibit or restrict the irresponsible advertising and promotion of alcohol.**

FARE supports the proposal to amend the Act to provide the Commissioner with the power to prohibit or restrict the irresponsible advertising and promotion of alcohol in light of the evidence showing that alcohol promotion influences the age at which young people begin drinking alcohol as well as influencing their levels of consumption.<sup>17 18 19 20</sup> The extent to which this proposal will minimise harm is dependent on how the restriction of irresponsible alcohol advertising and promotion is achieved.

### Recommendation

23. That the *Liquor Licensing Act 1990* be amended to give the Commissioner power to prohibit or restrict the irresponsible advertising and promotion of alcohol.

### **15 Develop guidelines that indicate the types of activities or promotions that would be restricted or prohibited and also include advice regarding actions that licensees can take to reduce the risks associated with alcohol promotions.**

FARE supports the need for a framework to support the Commissioner in his or her work in assessing whether to prohibit or restrict the irresponsible advertising and promotion of alcohol. However, criteria should be regulated so that they can be enforced, rather than developed in the form of guidelines which are not enforceable. These regulated criteria should include promotions conducted at both on- and off-licence premises.

The criteria to determine whether to prohibit or restrict the irresponsible advertising and promotion of alcohol should cover issues like the nature of the promotion and how it may encourage liquor consumption, promotional price of the alcohol product, duration of the promotion, implications of the promotion for public safety and amenity and the exposure of children to the promotion.

### Recommendations

24. That detailed criteria for determining prohibited and restricted alcohol promotions be established and regulated. This should include advice regarding actions that licensees can take to reduce the risks associated with alcohol promotions.

25. That criteria for determining prohibited and restricted alcohol promotions should:

- address promotions conducted at on and off-licence premises with equal weight;
- set a minimum price for alcohol at one dollar per standard drink;
- declare 'Shopper docket' (liquor promotion vouchers on the receipts for purchases) a prohibited promotional activity;
- prohibit point of sale promotional materials for liquor (e.g. 'happy hours', free gifts with purchase, prominent signage, competitions, price discounts for bulk purchases, and sale prices) from being displayed on and around licensed premises where minors are likely to be present; and
- prohibit alcohol promotions from being placed on state and local government property.

### **Trading hours and outlet density**

FARE is disappointed that the evidence on trading hours has been ignored in the development of proposals related to trading hours and outlet density. The current arrangements under the Act allow for on-licence premises to trade for 24 hours a day, since standard trading hours allow the sale of alcohol between 5.00am to 12.00am and out-of-hours permits authorise trade between 12.00am and 5.00am.

As mentioned in our submission to the Review's Discussion Paper, rates of alcohol-related assaults increase significantly between 6.00pm and 3.00am with the highest rates occurring between midnight and 3.00am.<sup>21 22 23 24</sup> Our submission referred to the evidence from Australia showing that restrictions in trading hours can have a marked impact on reducing alcohol-related assaults.

The Newcastle restrictions, where pub closing times were wound back and a lockout<sup>a</sup> introduced, resulted in a 37 per cent reduction in night time assaults between the hours of 10pm and 6.00am after 18 months.<sup>25</sup> A further evaluation was undertaken five years after the restrictions were introduced. This evaluation found that there was a sustained reduction in alcohol-related assaults in the Newcastle Central Business District with an average of a 21 per cent decrease in assaults per hour.<sup>26</sup> This compares closely with research in Norway where an average 20 per cent decrease in assaults per hour of restriction was observed in 15 cities where trading hours were restricted.<sup>27</sup> The Newcastle experience demonstrates how even modest reductions in trading hours can result in significant reductions in harms.

The *Liquor Control Act 1988* in Western Australia provides an example of how to incorporate trading hours within the Act.<sup>28</sup> Part 4 of the Act relates to *The conduct of business* and Division 1 of this part refers to *Hours of trading*. This Division includes specifications about general trading hours and hours of trading under different licence types such as a hotel licence, nightclub licence, restaurant licence, wholesaler licence and producer licence.

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<sup>a</sup> The lockout prevented new patrons from *entering* pubs after the specified time only; if people were already in a venue, the lockout did not prevent them from continuing to drink.

## Recommendations

26. That the *Liquor Licensing Act 1990* be amended to reduce standard trading hours to 10.00am-12.00am for all new and existing on-licences and permits (except for out-of-hours permits).
27. That extended trading hours for all new and existing on-licences with out-of-hours permits be reduced to 12.00am-3.00am, with lockouts no later than 1.00am.
28. That the *Liquor Licensing Act 1990* be amended to reduce standard trading hours to 10.00am-10.00pm for all new and existing off-licences.

### **16 Make outlet density data available to the Board when undertaking licensing decisions.**

FARE believes this proposal should go further to say that alcohol density data *will* be a consideration of the Board in assessing applications for a liquor licence, since there is strong evidence of the link between outlet density and alcohol-related assaults and hospitalisations.<sup>29 30 31</sup> For example, a longitudinal study from 1996 to 2005, using data from 186 postcodes in Melbourne, found a positive association between the density of general (hotel), on-trade and off-trade licences and rates of assault across all locations studied. The density of off-trade licences was more strongly associated with rates of assault in suburban areas, while the density of general (hotel) and on-trade licences was more strongly associated with rates of assault in inner city suburbs of Melbourne.<sup>32</sup>

In addition, FARE would like to reiterate recommendation 17 of its submission to the Discussion Paper which referred to the declaration of liquor saturation zones and a moratorium on liquor licences within these zones.

## Recommendations

29. That consideration of outlet density be required by the Licensing Board as part of the assessment of applications for a liquor licence.
30. That the Commissioner of Police, local government authorities and the Commissioner for Licensing be given the power to declare liquor outlet saturation zones in areas of Tasmania that are identified as having too many licensed premises and/or too many associated alcohol-related problems and that within these zones, a moratorium should be placed on all new licences.

## ***Power to prohibit alcohol products***

**17 Amend the Act to include a provision for the Minister, by notice in the *Gazette*, to prohibit alcohol products if it is in the best interests of the community and the Minister has consulted with liquor industry representatives and the manufacturer (if known). Failure to consult would not affect the validity of the notice.**

FARE supports in principle the proposal to amend the Act to include a provision for the Minister to prohibit alcohol products if it is in the best interests of the community. The Minister needs clear criteria to guide decision making. The qualifying phrase ‘In the best interests of the community’ is vague and open to interpretation, leaving the Minister exposed to criticisms about lack of clarity and transparency.

In its submission to the Review's Discussion Paper released last year, FARE outlined a number of criteria that could be used as the basis for decision making on whether to prohibit a product. These criteria were based on the powers available to responsible Ministers in Victoria, ACT, NSW, WA and Queensland and are detailed below for ease of reference:

- the product is likely to have a special appeal to children or young people;
- the product is likely to be confused with confectionery;
- the product is likely to be confused with a non-alcoholic drink;
- the name of the liquor product, or its design or packaging, is indecent or offensive;
- the name of the liquor product, or its design or packaging encourages irresponsible, rapid or excessive consumption of the product; and
- it is deemed by the Minister to be in the public interest to prohibit the liquor product.

FARE is not clear what benefit is associated with specifying the need for the Minister to 'consult' with liquor industry representatives in this situation, particularly since the proposal also says that failure to consult would not affect the validity of the notice. The phrase is superfluous and should be removed. Any consultation with liquor industry representatives should be restricted to giving the industry an opportunity to show cause why a product should not be prohibited and in advising the relevant parties of the decision. Further, any information provided by the industry in response to a notice to show cause should be supported by evidence.

Given the emphasis in the Proposals Paper on community safety and looking after the best interests of the community, there is a strong argument for the community to have a voice in the process. Hence, FARE reiterates that the community should have a voice in recommending products which should be prohibited.

### Recommendations

31. That the *Liquor Licensing Act 1990* be amended to grant special powers to the Minister responsible for alcohol control to prohibit alcohol products on the basis of clear criteria.
32. That the criteria to be used by the Minister for assessing whether an alcohol product should be prohibited be articulated in regulations.
33. That the following be removed from the proposal: 'and the Minister has consulted with liquor industry representatives and the manufacturer (if known).'
34. That members of the public be allowed to make representations to seek prohibition of an alcohol product.

## Miscellaneous practices

### *Provision of free drinking water*

**18 Amend the Act to require the provision of free drinking water in licensed premises with the Commissioner having the power to exempt certain classes of licence or a licensee upon application.**

FARE supports the proposal to amend the Act to require licensed venues to provide free drinking water. Provision of free water and encouraging the consumption of non-alcoholic beverages by patrons is a means of mitigating the potential for patrons to become intoxicated. Other states provide for free drinking water in their liquor Acts. For example, in WA all on-premise licensees must provide free drinking water at all times while alcohol is being sold or risk fines of \$10,000 for the licensee and \$4000 for the Manager.<sup>33</sup>

FARE supports the requirement that any exemption should be sought by application to the Commissioner and expects that exemption would only be given under the most unusual circumstances. It is not clear under what circumstances a licensee would not have access to free or low cost water and suggests that these occasions would be rare.

### Recommendation

35. That the *Liquor Licensing Act 1990* be amended to require the provision of free drinking water in licensed premises and that all licensed premises be required to meet this condition.

### *Banning/barring orders*

**19 Amend the Act to:**

- a. Enable police and licensees to issue barring orders that are for longer than 24 hours capped at six months.**
- b. Strengthen barring orders issued by police and licensees, by extending the order to include a vicinity of 50 metres from the venue within the first six hours of the barring, allowing for defences such as residing within that vicinity, needing to access transport within the vicinity or genuine safety fears.**
- c. Allow police to issue multi-venue or designated area barring orders where there is a strong public interest justification.**

FARE has no comment on the proposal to amend the *Liquor Licensing Act 1990* to issue and strengthen barring orders and apply to multi-venue or designated areas.



## **20 Develop guidelines and signage for venues to use to communicate what is expected of patrons and what it means to be barred.**

FARE has no comment on the proposal to amend the *Liquor Licensing Act 1990* to develop guidelines and signage for venues to use to communicate what is expected of patrons and what it means to be barred.

### **Data collection**

## **21 Amend the Act to allow alcohol sales data to be collected from wholesale and producer liquor licence holders.**

FARE supports the proposal to amend the *Liquor Licensing Act 1990* to allow alcohol sales data to be collected from wholesale and producer liquor licence holders. Alcohol sales data will provide more reliable estimates of alcohol consumption than the self-report consumption data currently used which underestimates alcohol consumption. Collection of this data should be mandatory and conducted on an ongoing basis.

### **Recommendations**

36. That the *Liquor Licensing Act 1990* be amended to allow mandatory collection of standardised alcohol sales data from wholesale and producer liquor licence holders that is consistent with the data requirements under the National Alcohol Sales Data Project.
37. That alcohol sales data collected from wholesale and producer liquor licence holders be publicly reported.
38. That data should be collected on the volume in litres of beer, wine, cask wine, fortified wine, spirits, pre-mixed spirit-based drinks, and cider sold in the previous financial year.

## **22 Tasmania to participate in the National Alcohol Sales Data Project.**

FARE welcomes the proposal for Tasmania to participate in the National Alcohol Sales Data Project (NASDP). The NASDP is an important project that provides information on alcohol sales in a number of states and territories. Alcohol sales data provides information about the volume of alcohol sold in a region and thus enables an estimation of the amount of alcohol consumed within that region. Importantly, this data allows comparisons of consumption levels between regions and provides a mechanism by which the impact of policy changes and interventions can be monitored and evaluated.

The aim of the NASDP is to establish an ongoing national database of standardised alcohol sales data. To maximise its effectiveness, the data needs to be regularly updated and include data from every state and territory in Australia. Currently only four out of the eight states and territories in Australia collect this data.

### **Recommendation**

39. That the proposal for Tasmania to participate in the National Alcohol Sales Data Project be adopted.

## Compliance & Enforcement - Enforcement model

### 23 Amend the Act to:

- a. Ensure that there are offences for licensee obligations.
- b. Ensure that obligations are extended to include permit holders.
- c. Include the following obligatory provisions for licence and permit holders (and others as necessary):
  - a licensee, permit holder or employee must not serve alcohol while intoxicated;
  - a licensee or permit holder must inform the Commissioner of personal detail changes; and
  - a licensee or permit holder must notify the Commissioner of any offences for which they are charged and/or convicted.
- d. Introduce a progressive administrative disciplinary process that enables staged disciplinary measures to be taken by the Commissioner dependant on the severity of the breach.
- e. Expand the current fine process (ie infringement notices) to give authorised officers (Liquor and Gaming Branch inspectors) the power to enforce certain offences contained in the Act.
- f. Extend offence provisions where appropriate (from licensees and permit holders to other persons) to encompass the responsible consumption of alcohol.

FARE supports in part the proposal to amend the Act to create offences for licensee obligations and to ensure compliance and enforcement by licence and permit holders. However, FARE believes the proposal needs to go further to grant powers that allow authorities to act quickly against licensees that contravene the Liquor Act and other relevant regulations and/or guidelines, including 24 hour closures. The risk of quick sanctions that are actively enforced acts as a strong deterrent to licensees to breach regulations.

### Recommendations

40. That the *Liquor Licensing Act 1990* be amended to create offences for licensee obligations and ensure compliance and enforcement by licence and permit holders.
41. That the *Liquor Licensing Act 1990* be amended further to include provision for the authorities to have the power to swiftly and consistently impose meaningful sanctions for premises who contravene the Act. These powers should include on the spot 24 hour closures.

## Supporting responsible service and consumption practices

### 24 Further explore an industry based mandatory funding arrangement to support responsible service and responsible consumption of alcohol initiatives.

FARE supports initiatives that support responsible service and responsible consumption of alcohol, however considers that a more appropriate mechanism to fund such initiatives would be through a risk-based licensing program. This approach would provide certainty of funding and remove any direct link with the alcohol industry.

Any program to support responsible service and responsible consumption of alcohol would need to be properly structured and evidenced based. It should also recognise that while initiatives designed to reduce demand play an important part in reducing consumption, there is an urgent need to address issues that relate to supply. These issues include the affordability of alcohol, its ready availability in relation to generous trading hours and number and concentration of outlets, and the relentless promotion and marketing of alcohol through traditional and social media, sponsorship of events, and branding of consumer goods from ice cream to clothing.

### Recommendation

42. That funding for the proposal to support responsible service and consumption of alcohol initiatives be achieved by using revenue generated by a risk-based licensing system to provide certainty and consistency of funding.

### Risk to children and young people

FARE made a number of recommendations in its submission to the Discussion Paper released last year as part of the Review of the *Liquor Licensing Act 1990*. These referred to matters such as consumer/community contribution to the liquor licensing process, controlled purchase operations, supply of alcohol to minors in private settings, and compliance activities. These recommendations are an important part of the suite of measures aimed at reducing the risk of alcohol harm to young people.

The Review process is concerned about strengthening existing consumer responsibilities but takes a punitive approach to this, such as through barring orders. Consumers, both young and old, have the potential to provide valuable insight to the impact on them of licensed venues and other licensing issues and therefore should have the opportunity to contribute to consultation processes and put forward suggestions and comments.

Controlled purchase operations, which in relation to alcohol involve supervised minors attempting to buy liquor from licensed premises to test licensees' compliance with supply laws, are an important component of any compliance activity. New Zealand currently uses controlled purchase operations to support New Zealand Police in their applications to licensing authorities to suspend or cancel offenders' liquor licences.<sup>34 35</sup> It is worth noting that a precedent exists for controlled purchase operations in Tasmania in the context of tobacco control, where they are used to test whether retailers are selling tobacco products to children.<sup>36</sup>

In relation to the issue of secondary supply of alcohol to minors, FARE commended Tasmania for its existing secondary supply laws under the *Police Offences Act 1935* and the *Liquor Licensing Act 1990* that apply to on licensed premises and private settings. FARE's submission suggested that secondary supply laws should be collated under one Act. Alternatively, both Acts could note the relevant secondary supply provisions of each Act to provide greater clarity about what the law says.

FARE supports public reporting of compliance activities to provide transparency and greater accountability for licensees. Public reporting makes licensees more attentive in making sure they meet their obligations under the Act to avoid being exposed. Information that could be made publically available includes the number of venues inspected and their location, the times of day that these venues were inspected and the number of identified breaches of compliance. Public reporting of

compliance is an important part of a range of measures designed to make licensed venues as safe as possible, particularly significant for young people.

The following recommendations were included in FARE's submission to the Review's Discussion Paper. Some have been amended slightly. These are included to re-emphasise their significance in reducing the risk to children and young people.

### Recommendations

43. The *Liquor Licensing Act 1990* be amended to provide members of the public with more opportunities to participate and provide input in licensing matters, such as the submission of complaints that may initiate disciplinary action.
44. The *Liquor Licensing Act 1990* be amended to introduce controlled purchase operations to identify and prosecute licensees found to be selling alcohol to people under the age of 18 years.
45. The existing secondary supply laws found under section 71 of the *Liquor Licensing Act 1990* and section 26 of the *Police Offences Act 1935* be amended to either collate the laws under one Act or alternatively:
  - the secondary supply provisions under the *Liquor Licensing Act 1990* should note the relevant secondary supply offence provisions under the *Police Offences Act 1935*, and
  - the *Police Offences Act 1935* should note the secondary supply provisions under the *Liquor Licensing Act 1990*
46. The *Liquor Licensing Act 1990* be amended to require the Commissioner and the Police to publicly report on compliance activities relating to the Act, including the number of venues inspected and their location, the times of day that these venues were inspected and the number of identified breaches of compliance.

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**Foundation for Alcohol Research & Education**

PO Box 19, Deakin West ACT 2600  
Level 1, 40 Thesiger Court Deakin ACT 2600  
Ph 02 6122 8600  
info@fare.org.au  
www.fare.org.au

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