

Review of the South Australian *General Code of Practice* and *Late Night Trading Code of Practice* under the *Liquor Licensing Act 1997*



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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*¹ 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.

¹ 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 on the South Australia Review of the *General Code of Practice* and *Late Night Trading Code of Practice* under the *Liquor Licensing Act 1997*.

Alcohol contributes to a range of short and long term harms that cost the Australian community approximately \$36 billion per year.

In South Australia, alcohol resulted in 426 deaths and 10,560 hospitalisations in 2010.¹ In 2011-12 there were 18,354 alcohol-related emergency department presentations.² These harms are significant and equate to one death, 29 hospitalisations each day and 50 emergency department presentations each day.

Alcohol also has an impact on people other than the drinker, being involved in up to 47 per cent of child protection cases³ and up to 65 per cent of all domestic violence.⁴

The most effective measures to reduce alcohol harms are well known. These include addressing the price of alcohol, reducing its availability, and restricting alcohol advertising and promotion to reduce exposure, particularly to young people.⁵ Despite this, alcohol is more affordable than it has been in three decades and more available and more heavily promoted than it has ever been. Preventing alcohol harm should be a priority for the South Australian Government.

The measures outlined in the *Late Night Trading Code of Practice* (the Late Night Code) and *General Code of Practice* (the General Code) are designed to better equip licensees to understand and comply with their obligations under the *Liquor Licensing Act 1997*, with a particular focus on on-licence premises such as pubs, clubs and bars. We commend the South Australian Government for undertaking a review of these Codes and encourage the Government to use this as an opportunity to strengthen these Codes to ensure that they contribute to a reduction in alcohol harms.

This submission makes recommendations for strengthening the Codes to ensure that they are an effective regulatory tool in reducing the significant and far reaching harms from alcohol on the South Australian community.

Structure of this submission

This submission will consider the measures introduced under each of the Codes of Practice and make comment in light of the evidence on the most effective strategies to reduce alcohol harm. This submission will respond to selected sections of the Codes.

Recommendations

1. That the *Late Night Trading Code of Practice* and *General Code of Practice* be amended to make harm minimisation the primary purpose of the Codes, with all other purposes subordinate.
2. That the mandatory nature of *Late Night Trading Code of Practice* and *General Code of Practice* limit exemptions to ensure broad coverage of the Codes and maximise their effectiveness.
3. That the *Late Night Trading Code of Practice* and *General Code of Practice* are adequately enforced and penalties applied quickly and consistently for breaches of the Codes.
4. That the *General Code of Practice* be amended to require licensees and staff to undertake Responsible Service of Alcohol training every five years as a minimum.
5. That the *Late Night Trading Code of Practice* and *General Code of Practice* include the current restrictions on the sale and supply of beverages promoting rapid or excessive consumption and apply these to all on-licence venues at all times, not just to those trading after 4:01am.
6. That the *Late Night Trading Code of Practice* and *General Code of Practice* include additional measures to reduce the excessive and harmful consumption of alcohol and support the Responsible Service of Alcohol in on-licence venues including:
 - i. prohibiting the sale of shots, mixed drinks with more than 30ml of alcohol and ready to drink beverages stronger than five per cent alcohol by volume after 10.00pm
 - ii. placing a limit of four drinks on the number of drinks a person can purchase at one time after 10pm
 - iii. prohibiting the sale of alcohol mixed with energy drinks after midnight, and
 - iv. stopping the sale of alcohol 30 minutes before closing.
7. That the *Late Night Trading Code of Practice* be amended to apply to all venues that trade after midnight.
8. That the *Late Night Trading Code of Practice* requirement for Drink Marshals apply for all venues trading after 12 am.
9. That the *Late Night Trading Code of Practice* introduce a lockout from 1am and closing time of 3am.
10. That the *General Code of Practice* clearly defines the four levels of risk: 'low risk', 'medium risk', 'high risk' and 'unacceptable risk'.
11. That the *General Code of Practice* clearly defines the term 'reasonable steps'.
12. That Controlled Purchase Operations be introduced to ensure compliance with the provisions relating to the supply of alcohol to minors in the *General Code of Practice* and the *Liquor Licensing Act 1997*, with harsh penalties for non-compliance.

Late Night Trading Code of Practice and General Code of Practice

This section will discuss both of the Codes in relation to their purpose, nature and references to Responsible Service of Alcohol and the promotion of alcohol.

Purpose of the Codes

Current policy

The purpose of the *Late Night Trading Code of Practice* (Late Night Code) and *General Code of Practice* (General Code) is to promote the objects of the *Liquor Licensing Act 1997* (the Act) in addition to other outcomes specific to each Code. These additional outcomes include encouraging 'responsible attitudes towards the promotion, sale, supply, consumption and use of liquor',⁶ minimising 'harmful and hazardous use of liquor', preventing 'offensive behaviour', protecting 'the safety health and welfare of staff, customers and minors', and ensuring 'public order'.⁷

The Objects under the Act, which the Codes must comply with, include many of the principles outlined in the Codes, as well as furthering 'the interests of the liquor industry and industries with which it is closely associated, such as the live music industry, tourism and the hospitality industry'.⁸

Response

Both the purpose of the Codes and the Objects of the Act demonstrate conflicting and opposing priorities of minimising harm and furthering the interests of the alcohol the industry. Clarity is needed in the purpose of the Codes and Objects of the Act to ensure that harm minimisation and community interests are prioritised ahead of business interests. Changes in the Objects to prioritise harm minimization should be a primary consideration when next undertaking a review of the Act.

Given the significant impact of alcohol-related harms on South Australians, economic considerations such as the impact on the alcohol industry and associated industries should be subordinate to the health, wellbeing and safety of the community. Clarity is needed in both The Late Night Code and The General Code to ensure that harm minimisation is the primary intention of the Codes.

Recommendation

1. That the *Late Night Trading Code of Practice* and *General Code of Practice* be amended to make harm minimisation the primary purpose of the Codes, with all other purposes subordinate.

The nature of the Codes

Current policy

All licensees must comply with the Liquor and Gambling Commissioner's Codes of Practice under section 42 of the Act. However exemptions apply to some licensees under both Codes of Practice.

For example, under the Late Night Code, premises that are closed from 3am but open for trade between 5am and 7am do not fall under the Code. In addition, the requirements under Parts 3 and 5 of the Late Night Code (which refer to Drink Marshals, First Aid, Metal detectors and Digital Closed Circuit Television) only apply to venues that have more than 200 patrons. Furthermore, the Liquor and Gambling Commissioner has the power to grant exemptions to specific provisions within both Codes.

Legislated penalties apply for breaches of the conditions of the licence under section 45 of the Act. Currently, the maximum penalty for a first offence is \$10,000 with subsequent offences attracting a penalty of \$20,000.⁹

Response

The financial penalties outlined above for breaches of the licence conditions apply to the maximum amount payable. The amount of the penalty payable is at the discretion of the Court. Lower penalties can be applied and to avoid court altogether, licensees can pay an Expiation Fee of just \$1,200. However, the General Code of Practice Guidelines say that breaches of licence conditions *may* result in disciplinary action or prosecution.¹⁰ Licensees may not have to pay any penalty.

Mandatory codes provide a minimum level of protection for patrons and provide the legislative support needed to motivate licensees to comply with the Act and Codes and enable meaningful enforcement. Mandated restrictions also support licensees who would like to introduce measures that will reduce the risk of alcohol harm but have difficulty reconciling the desire to voluntarily introduce such measures against the risk of them being unpopular with their customers.¹¹ Voluntary codes are often weak and ineffective since there is no mechanism by which they can be enforced nor penalties applied.

However the exemptions from the Codes weaken their effectiveness of the Codes and provide loopholes that can be exploited. Similarly low penalties and lack of certainty about enforcement of the Codes are unlikely to encourage compliance with licence conditions.

To be an effective regulatory tool and act as a deterrent to breaches, the Codes must be mandatory with coverage across the industry and financial penalties need to be significant and applied swiftly. The Codes must also be enforced through increased and highly visible police checks of venues that can be observed by the community. Penalties should be clearly outlined and responses to breaches of the Act or the Codes should be immediate. Without appropriate enforcement mechanisms, these Codes will have limited impact on reducing alcohol harm.

Recommendations

2. That the mandatory nature of *Late Night Trading Code of Practice* and *General Code of Practice* limit exemptions to ensure broad coverage of the Codes and maximise their effectiveness.
3. That the *Late Night Trading Code of Practice* and *General Code of Practice* are adequately enforced and penalties applied quickly and consistently for breaches of the Codes.

Responsible Service of Alcohol

Current policy

Both The Late Night Code and The General Code include provisions for Responsible Service of Alcohol (RSA) and the promotion of alcohol. The General Code require that all staff involved in the service and supply of alcohol have nationally accredited RSA training which must be completed within three months of being employed.

Response

While RSA training is mandatory in every state and territory in Australia, there is evidence to suggest that RSA practices are not always adhered to, reinforcing the need to ensure that compliance is enforced. The length and depth of training also varies between locations and approved training organisations.¹² Licensees and staff in South Australia are also not required to update their RSA training to keep in touch with developments in this area.

The South Australian Government should ensure that RSA training is consistently provided to all staff, updated every five years and compliance enforced. A refresher course in RSA would provide licensees and staff with contemporary knowledge of the law and serving practices and would be consistent with practices in some other states and territories where RSA training (or equivalent) is required every three to five years.¹³

Recommendation

4. That the *General Code of Practice* be amended to require licensees and staff to undertake Responsible Service of Alcohol training every five years as a minimum.

The promotion of alcohol

Current policy

The General Code specifies that licensees ‘must not conduct, promote, advertise or permit the conduct, promotion or advertisement of their business in a way that would encourage rapid or excessive consumption liquor or that discourages a responsible attitude to the consumption of liquor’.¹⁴

The General Code does not permit gender based promotions and requires that free drinking water is readily available. In addition, licensees must make at least one non-alcoholic beverage, other than water, available for purchase at a price that is no more expensive than the least expensive alcoholic beverage available for purchase.¹⁵

The Late Night Code restricts ‘the sale or supply of any alcoholic beverages that encourage the rapid or excessive consumption of liquor’ between 4.01am and 7am (or earlier closing time). These include shooters, doubles, test tubes and jelly shots and any other beverage that contains more than 45ml of spirits.¹⁶

Response

These measures currently in the Codes do not provide adequate coverage to prevent the harmful and reckless promotion alcohol. For example, the ban on the sale of alcoholic beverages that encourages rapid or excessive consumption of alcohol such as shooters and doubles only applies to venues trading after 4am, despite these practices having the potential to cause harm throughout the night.

The restrictions on the sale and supply of beverages that promote rapid consumption should apply to all venues. A 4am restriction on the sale of these beverages is ineffective in reducing harm amongst the many people consuming alcohol prior to 4am. The effectiveness of this measure is severely compromised by coming into effect so late in the night.

Other measures should be introduced to reduce alcohol-related violence in and around licensed venues. These include limitations on the number of drinks that can be served to patrons at any one time, prohibiting the stockpiling of drinks by patrons, stopping the sale of alcohol at least 30 minutes before closing time, a 10-minute alcohol sales ‘time out’ every hour after midnight and active distribution of water and/or food. Restricting the sale of energy drinks mixed with alcohol is another measure that can reduce excessive consumption and alcohol harm. This behaviour is a concern because energy drinks have been shown to mask the effects of intoxication which can lead to an increase in risky behaviours.¹⁷

Evidence from the Newcastle restrictions which saw a sustained reduction in alcohol-related violence over a five year period, support the use of other measures to reduce harm. In addition to earlier closing times and the introduction of lockouts, the Newcastle restrictions included strategies such as no longer serving ready to drink (RTD) drinks with more than five percent alcohol and shots after 10pm. A study that observed compliance with the conditions found that compliance was high, with 97.4 per cent of observations reporting that RTD drinks with more than five percent alcohol were not served after 10pm and 96 per cent reporting that shots were not served after 10pm.¹⁸

There is strong support from South Australians for a range of these measures to increase safety and reduce alcohol-related violence, such as stopping the sale of alcohol 30 minutes before closing (70 per cent support), placing a limit of four drinks on the number of drinks a person can purchase after 10pm (58 per cent support) and stopping the sale of alcohol and energy drinks after midnight (56 per cent support).¹⁹

Recommendations

5. That the *Late Night Trading Code of Practice* and *General Code of Practice* include the current restrictions on the sale and supply of beverages promoting rapid or excessive consumption and apply these to all on-licence venues at all times, not just to those trading after 4:01am.
6. That the *Late Night Trading Code of Practice* and *General Code of Practice* include additional measures to reduce the excessive and harmful consumption of alcohol and support the Responsible Service of Alcohol in on-licence venues including:
 - i. prohibiting the sale of shots, mixed drinks with more than 30ml of alcohol and ready to drink beverages stronger than five per cent alcohol by volume after 10.00pm
 - ii. placing a limit of four drinks on the number of drinks a person can purchase at one time after 10pm
 - iii. prohibiting the sale of alcohol mixed with energy drinks after midnight, and
 - iv. stopping the sale of alcohol 30 minutes before closing.

Late Night Trading Code of Practice (the Late Night Code)

This section will discuss the Late Night Code in relation to the application of the Late Night Code and late night restricted entry.

Application of the Late Night Code

Current policy

The Late Night Code currently applies to all licensed venues that trade between 3am and 7am on any day, except for those that have been closed since 3am but open between 5am and 7am.²⁰ Further exemptions to provisions of the Late Night Code also exist. Licensed venues with fewer than 200 patrons are exempt from provisions under Part 3 of the Late Night Code which requires that the venue has a Drink Marshal on duty from 12.01am to monitor compliance with the Act and a staff member present who is qualified in First Aid.²¹

Response

Exemptions create loopholes for licensees and weaken the Code. For example, venues that are closed at 3am but open before 7am, which are not required to adhere to provisions relating to restricted access and restricted promotion, could create an opportunity for patrons to circumvent lockouts after leaving a late night venue by entering an early opening venue. Exemptions also fail to recognise the risk for venues to which the exemption applies.

The Late Night Code should apply to all on-licence venues trading from 12am onwards in light of the increased risk of alcohol-related harm after midnight. Research by the New South Wales (NSW) Bureau of Crime Statistics and Research (BOCSAR) shows that alcohol-related assaults increase significantly after midnight.^{22,23} The BOCSAR study found that alcohol-related assaults were most frequent on Saturdays and Sundays between midnight and 3am, where alcohol-related assaults accounted for 55.3 and 52.6 per cent of all assaults respectively.²⁴ To ensure that the Late Night Code protects people from alcohol-related harms, the Late Night Code should apply to venues earlier in the night.

Drink Marshals should be required at all licensed venues that trade after midnight, regardless of their venue capacity. Drink Marshals have an important role in ensuring that licensees meet their RSA requirements and create safer environments for patrons both on and off premises.

Recommendations

7. That the *Late Night Trading Code of Practice* be amended to apply to all venues that trade after midnight.
8. That the *Late Night Trading Code of Practice* requirement for Drink Marshals apply for all venues trading after 12 am.

Late Night Restricted Entry

Current policy

The Late Night Code requires licensed venues to prevent entry to patrons between 3.01am and 7am (or earlier closing time).²⁵ Restricted entry, or lockouts as they are also known, are an important component of measures designed to reduce alcohol-related violence and harm in pubs, clubs and bars. Lockouts are found in a number of states and territories including South Australia, Queensland and NSW.

Response

To maximise the effectiveness of this measure, Late Night Restricted Entry in licensed venues should apply earlier in conjunction with earlier closing times. Almost two thirds (65 per cent) of South Australians support the introduction of lockouts from 1am and 78 per cent support a closing time of 3am for pubs, clubs and bars.²⁶

Lockouts were part of a suite of restrictions placed on venues in Newcastle in 2008. These restrictions included a 3am close time and 1am lockout which were later amended to 3.30am and 1.30am following a legal challenge by the licensed premises. The Newcastle restrictions resulted in a 37 per cent reduction in night time assaults between the hours of 10pm and 6am after 18 months.²⁷

Lockouts from 1.30am were introduced in the Sydney Central Business District (CBD) Entertainment Precinct just over 12 months ago as part of a package of reforms including 3am last drinks.

A formal evaluation of the effectiveness of the measures has not been conducted, however anecdotal reports from the community, police and health services indicate that they are experiencing significant reductions in alcohol harms and increases in community amenity.

St Vincent's Hospital in Sydney has reported that "there have been no potentially-fatal single punches since the laws were introduced in February,"²⁸ and NSW Police have observed a "drop in assaults in the area since the lockout laws were introduced."²⁹

Recommendation

9. That the *Late Night Trading Code of Practice* introduce a lockout from 1am and closing time of 3am.

General Code of Practice (the General Code)

This section will discuss the General Code of Practice in relation to the interpretation of the General Code and practices relating to minors.

Interpretation of the General Code

Current policy

Section 4 of the General Code provides some guidance on interpreting the General Code. For example, it clarifies that expressions used in the Act have the same meaning in the General Code, that levels of risk should be assessed on the basis of a scale from 'low risk' through to 'unacceptable risk' and that 'reasonable steps' will be deemed to have been taken where the licensee is able to demonstrate that they have reasonably assessed the risk.³⁰

Consumer and Business Services also provide supporting documentation to assist licensees meet the requirements of the General Code. These include a *Licensee Risk Assessment and Management Plan Template*³¹ to assist licensees to comply with the requirement for a written management plan and *General Code of Practice Guidelines*³² (the Guidelines) which provide examples of good practices and outline some of the factors to be considered when making an assessment of the risks associated with the licence.

Response

Further clarification is needed for the levels of risk referred to in the General Code. The processes associated with development of the *Risk Assessment and Management Plan* also needs to be strengthened.

The four levels of risk described in section 4(2) that is, low risk, medium risk, high risk and unacceptable risk, are not defined and instead, vague guidance is given which indicates that the levels of risk are to be assessed on the basis of what a 'reasonable person' would consider these to be.

In section 4(4), the General Code refers to licensees being deemed to have taken 'reasonable steps' where they can demonstrate that they have 'reasonably' assessed the risk and likelihood of an outcome occurring and have a management plan in place. Again, the term 'reasonable' is not defined nor guidance given.

The *Licensee Risk Assessment and Management Plan Template* is a tool that is available to assist licensees in developing their management plan. It is not mandatory for licensees to use the template and the Guidelines have no legal force. Furthermore, there is no clarification of the terms used to describe the different levels of risk outlined in the General Code.

Greater clarification on these terms is important as one person's view of high risk or reasonable steps may be different to another's and both may be different to the view of the South Australian Government's. This uncertainty leaves open the opportunity for a licensee to argue that they have taken what they believed to be reasonable steps and makes prosecution of non-compliance with the General Code more difficult.

Recommendations

10. That the *General Code of Practice* clearly defines the four levels of risk: 'low risk', 'medium risk', 'high risk' and 'unacceptable risk'.
11. That the *General Code of Practice* clearly defines the term 'reasonable steps'.

Practices relating to minors

Current policy

The General Code specifies that licensees must take reasonable steps to prevent the supply or consumption of alcohol by minors on licensed premises and minors entering an area that is out of bounds to them. Licensees must also make sure that that they do not undertake, or allow to occur, activities that encourage minors to consume alcohol.³³

Response

It is important to put in place compliance measures to check that young people are not directly purchasing alcohol from both on and off-licence premises. Controlled Purchase Operations are one way to ensure compliance with the General Code and for the South Australian Government to actively raise licensee awareness. They are designed to monitor and enforce provisions in liquor laws that relate to the sale and supply of liquor to minors.

Controlled Purchase Operations involve engaging supervised volunteers (15 to 17 years of age) to attempt to purchase liquor. These types of purchases can be tested at both on and off licensed premises. If the volunteer is able to successfully purchase alcohol, the operator of the premises (licensee and/or manager) and staff member are liable to prosecution under the relevant section of the Act.

Controlled Purchase Operations have been in place in New Zealand for over a decade.³⁴ They are used to support New Zealand Police in their applications to licensing authorities to suspend or cancel offenders' liquor licences.^{35,36}

Legislation in South Australia should be amended to enable police to undertake Controlled Purchase Operations for alcohol. Where licensees are found to breach the General Code, penalties should be applied to reinforce the need to comply with the General Code.

Recommendation

12. That Controlled Purchase Operations be introduced to ensure compliance with the provisions relating to the supply of alcohol to minors in the *General Code of Practice* and the *Liquor Licensing Act 1997*, with harsh penalties for non-compliance.

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