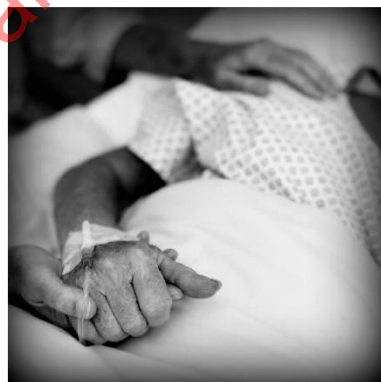




## NAAPA Submission – Liquor Regulation 2018



July 2018

## About the NSW/ACT Alcohol Policy Alliance

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

To contact the NAAPA secretariat email [info@naapa.org.au](mailto:info@naapa.org.au) or for more information about NAAPA visit [www.naapa.org.au](http://www.naapa.org.au)

The following are the NSW members of NAAPA:

- Foundation for Alcohol Research and Education (FARE)
- Network of Alcohol and Drug Agencies (NADA)
- Darlinghurst Resident Action Group (DRAG)
- Newcastle Community Drug Action Team
- Police Association of NSW
- Australian Medical Association (AMA) NSW
- The Royal Australasian College of Surgeons (RACS)
- Public Health Association NSW Branch
- Cancer Council NSW
- National Drug and Alcohol Research Centre (NDARC)
- Centre for Health Initiatives, University of Wollongong
- Hello Sunday Morning
- The Australasian College for Emergency Medicine (ACEM)
- Jewish House
- Inspire Foundation
- The Asia Pacific Centre for Crime Prevention Griffith University (Sydney)
- University of Newcastle
- Ulladulla Community Drug Action Team
- Drug and Alcohol Research and Training Australia (DARTA)
- Bondi Residents Association
- Noffs Foundation (NSW)
- St Vincent's Hospital
- Alcohol and Drug Foundation
- Health Services Union
- Pedestrian Council of Australia
- The Salvation Army NSW
- Awabakal Newcastle Aboriginal Co Operative Ltd
- The Royal Australasian College of Physicians (RACP)
- Byron Bay Youth Service
- NSW Nurses and Midwives Association
- 2011 Residents Association
- Bondi beach precinct
- CatholicCare Goulburn
- Mental Health Association of NSW
- The Royal Australian College of General Practitioners (RACGP)
- The Potts Point and Kings Cross Heritage Conservation Society
- Thomas Kelly Youth Foundation
- Australian Salaried Medical Officer's Federation NSW (ASMOF) NSW
- Australian Health Promotion Association (AHPA)

# Contents

Summary .....	4
Recommendations .....	5
Regulation of alcohol .....	7
Principle 1: Processes should be transparent, consultative, timely and reduce the burden on community stakeholders. ....	8
Principle 2: Decision-making bodies should develop regulatory structures in line with harm minimisation principles.....	9
Principle 3: Regulation should be supported by data and evidence. ....	10
Principle 4: Responsibility for regulating liquor licensing should be independent of industry interests. ....	11
Key issues with the proposed changes .....	12
1. Community Impact Statement (CIS) .....	12
Process .....	12
Concerns with the Proposal .....	12
2. Small bar exemptions.....	14
Comments on other proposals .....	15
1. Fees .....	15
2. Application notification.....	16
3. Large-scale events.....	16
Supporting documentation.....	17
References .....	18

## Summary

The members of the NSW ACT Alcohol Policy Alliance (NAAPA) are united in their desire to see a reduction in alcohol harm in NSW and the ACT. With that goal in focus, we have strong reservations about the proposed Liquor Regulation 2018 (the proposed Regulation). While the primary objective of the proposed Regulation is to support the operation of the *Liquor Act 2007* through regulatory practices that are transparent, consistent and reasonable<sup>1</sup> the current consultation process and recommendations fail to reflect these principles.

This consultation on the proposed Regulation has been unclear, misleading, and constrained. There has been little effort to raise awareness about the consultation, and inadequate time devoted to consultation. NAAPA was officially informed of the consultation only 8 working days before submission due date. With the new regulations required to take effect from 1 September 2018, there is little time for stakeholder feedback to be properly considered and fed into the review process.

There has been no effort towards a comprehensive review of the current Regulation, and no support for the stakeholders to review all the changes in the proposed Regulation. Indeed, many changes were not even identified in the Regulatory Impact Statement (RIS). Other significant changes, such as change to the requirements for the Community Impact Statement (CIS) were labelled as “minor and machinery reforms”. The CIS requirements, far from being minor, are the subject of an ongoing review, with the proposed changes in the Regulation pre-empting and undermining that process.

In light of the above, NAAPA is calling for a full and comprehensive review of the Regulation within the next six months. As a minimum no changes should be made to the community consultation processes until the CIS review is finalised and equivalent community safeguards are put in place.

Going forward, NAAPA has identified four principles that should guide the regulatory environment:

1. Processes should be transparent, consultative, timely and reduce the burden on community stakeholders.
2. Decision-making bodies should develop regulatory structures in line with harm minimisation principles.
3. Regulation should be supported by data and evidence.
4. Responsibility for regulating liquor licensing should be independent of industry interests.

NAAPA urges that future reforms are made in light of these principles.

Regarding the proposed Regulation, NAAPA’s response focuses on two priority issues. NAAPA strongly opposes the removal of the CIS requirement from the regulations and the shift in onus of proof from the applicant to individuals within the community. Similarly, NAAPA does not support the continued exemption of small bars from a number of provisions within the proposed Regulation. These exemptions undermine the intent and effectiveness of the liquor regulations.

Brief attention is given to a number of other specific provisions such as improving the risk-based licensing system and recovery of administrative costs, and further improvements to the application notification requirements. With more time NAAPA would have also liked to address the responsible service of alcohol requirements for BYO venues, and make suggestions regarding the expansion of the number of designated entertainment precincts. Lack of time prevents us from making a more thorough submission.

Finally, NAAPA’s submission provides further reading to support the review of the proposed Regulation.

## Recommendations

1. Liquor & Gaming NSW terminate this process and conduct a full and comprehensive review of the liquor regulations within the next six months. In the interim the proposed removal of the Community Impact Statement should not proceed.
2. Liquor licencing processes be conducted in a transparent fashion with improved public awareness, engagement and community input to the process.
3. Insert a definition of harm within the liquor regulation encompassing harm relating to the sale, supply and consumption of alcohol including:
  - a. the risk of harm to children, vulnerable people and communities (whether to a community as a whole or a group within a community);
  - b. the adverse economic, social and cultural effects on communities (whether on a community as a whole or a group within a community);
  - c. the adverse effects on a person's health;
  - d. alcohol abuse or misuse; and
  - e. domestic violence and/or anti-social behaviour, including causing personal injury and property damage.
4. Introduce state-wide wholesaler and producer alcohol sales data collection in line with other states and territories:
  - a. detailing transaction level data including alcohol type, volume and cost as well as the purchasers' retail licence number; and
  - b. enabling reporting and participation in the National Alcohol Sales Data Project.
5. The NSW Government retain regulatory control of alcohol and ensure that the future development and regulation of alcohol policy is conducted free from industry involvement.
6. Shift the responsibility for regulating liquor licensing from the Department of Industry and relocate the licensing authorities to a department that more directly connects liquor licensing with, and facilitates input from, policing, family and community services, health, justice, land and planning, and local government.
7. That changes to the Community Impact Statement component of the liquor regulations are made only:
  - a. after the final report of the Community Impact Statement review are made public and reviewed; and
  - b. when alternative arrangements are put in place that ensure an equal or greater level of community consultation and risk assessment from the applicant.
8. That the NSW Government properly resource Independent Liquor and Gaming Authority to monitor compliance and independently assess every application.
9. That an independent Community Defender's Office be established to support communities in licensing matters.
10. Ensure that all licence applicants converting to a small bar licence comply with the same notification requirements as a new liquor licence.

11. Improve the consistency of liquor regulation by removing the exemptions for small bars including:
  - a. The automatic extension of trading hours for small bars to adequately recognise risk associated with late trade.
  - b. The Community Impact Statement and application notification exemptions for small bars to ensure adequate provision for community input to liquor licensing decisions.
  - c. Reinstating the 60 patron limit for small bars.
12. Increase the fees under the periodic licence fee scheme to recover more of the expense associated with administration of the licensing system.
13. Apply the patron capacity loading element to all periodic licences, not just those required to pay the compliance history loading element.
14. Extend scope of risk-based licensing calculations to include extended trading hours for all licences, including small bars.
15. Require that all licence applicants notify residents, business and other premises, including schools and health services, within the primary trade area of a licence application.
16. Introduce the Western Australia model for liquor licence fees of large-scale commercial events.

# Regulation of alcohol

Alcohol is no ordinary commodity and as such must be appropriately and effectively regulated.

In NSW, alcohol is responsible for 13,624 emergency department presentations, 53,924 hospitalisations and 1,300 deaths every year.<sup>2</sup> The scale and variety of harm that alcohol causes to innocent third parties distinguishes it from other health and lifestyle risks, such as smoking and gambling. This harm includes street and family violence,<sup>3,4,5</sup> road traffic accidents,<sup>6</sup> and child maltreatment.<sup>7</sup> Alcohol is also the major contributor to the three leading causes of death among adolescents; unintentional injuries, homicide and suicide.<sup>8</sup> The social and economic costs to the community as a result of alcohol must be reduced.

The majority (83 per cent) of NSW adults believe more needs to be done to address alcohol harm<sup>9</sup> and that governments have an obligation to protect their citizens against agents of harm, including alcohol, which has wide-reaching, negative impacts on individuals and the community.<sup>10</sup> This can be achieved through effective regulation of the availability, promotion and price of alcohol.

NSW has its own liquor licensing legislation, *Liquor Act 2007* (the Act), which is supported by subordinate legislation, *Liquor Regulation 2008*. This subordinate legislation is due to sunset on 1 September 2018.

As stated in the Regulatory Impact Statement (RIS) “failing to remake the Regulation in advance of its repeal on 1 September 2018 would impair the operation of the Act, and result in significant deregulation.” This would have significant negative consequences on the NSW community. NAAPA agrees with Liquor & Gaming NSW that the regulations should not be allowed to lapse without new regulations in place. However, NAAPA deems it inappropriate to make substantial changes, such as the removal of the Community Impact Statement (CIS), without adequate stakeholder consultation.

For this reason, NAAPA has suggested the Liquor & Gaming NSW conduct a proper review of the regulations within the next six months. Reforms to the regulation of alcohol must be comprehensive and must acknowledge that the current system of regulation is not adequately mitigating the harm that so frequently results from the sale and consumption of alcohol.

NAAPA has identified four principles for more effective regulation, consistent with general principles and guidelines for regulatory best practice:

1. Processes should be transparent, consultative, timely and reduce the burden on community stakeholders.
2. Decision-making bodies should develop regulatory structures in line with harm minimisation principles.
3. Regulation should be supported by data and evidence.
4. Responsibility for regulating liquor licensing should be independent of industry interests.

These principles should guide future developments to the regulatory systems in NSW.

## **Principle 1: Processes should be transparent, consultative, timely and reduce the burden on community stakeholders.**

The current regulatory system in NSW is complex and difficult for community stakeholders to understand and navigate. The functions of liquor regulation are divided between Liquor & Gaming NSW and the Independent Liquor and Gaming Authority (ILGA).

NAAPA would like to express our strong concern over the consultation process on the proposed Regulation. The truncated and perfunctory consultation process has not been designed to extract the necessary evidence needed to support the regulatory changes. We are also concerned about the lack of transparency and inaccurate representation of the changes as “minor”.

As stated in the Regulatory Impact Statement (RIS):

*When a regulation is due for repeal, the responsible agency must review the regulation, its social and economic impacts, and the need for the regulation, and decide whether it should lapse or be remade. The results of this review are typically required to be published in a Regulatory Impact Statement (RIS), with submissions invited from the public.*

It is not apparent that a proper and comprehensive review of the regulations has been carried out. Furthermore, it is clear that there has been no active prior consultation into the proposed changes with community, health, front line services and other stakeholders. The amendments are numerous and concealed in a dense RIS. They are not easily identified and respondents have had limited time to comment.

The public consultation into the proposed Regulation has been extremely truncated with only 17 working days provided for comment. This is completely inadequate as it does not provide facilitative and timely consultation, thereby diminishing any active engagement with stakeholders. Liquor & Gaming NSW have known for 10 years that the current regulations will sunset on 1 September 2018. Despite this they have only allocated two months to conduct public consultations and amend the regulations before expiration. This is not sufficient time to effectively engage with stakeholders and significantly reduces transparency. Furthermore, there has been no engagement with community representatives on the proposed Regulation prior to this public consultation.

It is concerning that a matter pertaining directly to community input was not proactively brought to the attention of the community. Stakeholders needed to be subscribed to the Liquor & Gaming NSW mailing list to receive an email notification about the consultation on Friday 29 June 2018. Formal invitations to make a submission were delayed even further with NAAPA receiving a letter dated Friday 13 July 2018, only seven working days before the submission due date of 24 July 2018.

The RIS states that “(t)he proposed Regulation remakes the current Regulation with a number of minor and machinery reforms.” Removing the CIS requirement is not a minor change and it is disappointing that proactive consultation was not sought prior to the inclusion of the amendment. NAAPA has no faith in the current consultation process due to the lack of transparency, the misleading way in which the available information has been presented and the limited amount of time to comment on the extensive changes within the proposed regulations.

Liquor & Gaming NSW must significantly improve their consultation processes if they wish to gain an accurate reflection of stakeholder views and positively advance the regulations.



## Recommendation

1. **Liquor & Gaming NSW terminate this process and conduct a full and comprehensive review of the liquor regulations within the next six months. In the interim the proposed removal of the Community Impact Statement should not proceed.**
2. **Liquor licencing processes be conducted in a transparent fashion with improved public awareness, engagement and community input to the process.**

## Principle 2: Decision-making bodies should develop regulatory structures in line with harm minimisation principles.

Alcohol causes considerable harm within the community and this should be reflected in the laws that govern the sale and supply of alcohol. Currently the Act does not include harm minimisation as an Object.<sup>11</sup> The Objects of the Act are as follows:

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

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

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

NAAPA strongly believes that harm minimisation should be included as an object in the Act, the South Australian Liquor Act is an illustrative example of how this might be achieved.<sup>12</sup>

In the absence of a harm minimisation objective in the Act, NAAPA proposes that the Regulation include a definition of harm that encompasses the scale and variety of harm caused by alcohol. This would ensure at least that the Regulation is read through a harm minimisation lens.

## Recommendation

3. **Insert a definition of harm within the liquor regulation encompassing harm relating to the sale, supply and consumption of alcohol** including:
  - a. the risk of harm to children, vulnerable people and communities (whether to a community as a whole or a group within a community);
  - b. the adverse economic, social and cultural effects on communities (whether on a community as a whole or a group within a community);
  - c. the adverse effects on a person's health;
  - d. alcohol abuse or misuse; and

- e. domestic violence and/or anti-social behaviour, including causing personal injury and property damage.

### **Principle 3: Regulation should be supported by data and evidence.**

Data collection on consumption and alcohol harm provides essential information on what Australians drink and the harm associated with alcohol. This information enables researchers and policy makers to develop, implement and track the progress of evidence-based alcohol policies. Regulatory reform without adequate data risks implementing less effective policies.

The NSW Bureau of Crime Statistics and Research (BOCSAR) collects comprehensive data that details the type of crime, time, location and whether alcohol was involved. NSW Health and hospitals across the state also collect ambulance, emergency department and other alcohol-related health data. However, there is currently no policy in NSW regarding the collection of alcohol sales data.

NSW is the only state or territory not collecting or committed to collecting state-wide data on alcohol sales. Alcohol sales data is the gold standard recommendation of the World Health Organization (WHO) for measuring alcohol consumption within communities.<sup>13</sup> Self-reported survey data has been found to be incredibly inaccurate, accounting for less than 50 per cent of consumption.<sup>14</sup> Reliable estimates of alcohol consumption at the local level is crucial for monitoring, policy development and evaluation, targeting and program planning.<sup>15</sup> It is critical that all Australian states and territories, including NSW, gather consistent and reliable state-wide alcohol sales data.

Prior to 1996, state-wide wholesale alcohol sales data collection was mandatory for all states and territories.<sup>16</sup> Once collection became optional, only the Northern Territory (NT), Queensland and Western Australia (WA) chose to continue collection. Legislation requiring the collection of wholesale data was reintroduced in the Australia Capital Territory (ACT) in July 2012, Victoria in July 2015 and Tasmania in September 2016.<sup>17</sup> In November 2016 the South Australian (SA) Government committed to introducing similar collection methods.<sup>18</sup> This leaves NSW as the only state or territory not collecting or committed to collecting state-wide wholesale alcohol sales data (Table 2).

**Table 2: Summary of state-wide alcohol sales data collection by jurisdiction**

	<b>Reported By</b>	<b>Frequency of Reporting</b>
<b>NSW</b>	No state-wide data	No state-wide data
<b>QLD</b>	Wholesale licensees, liquor producers, wine producers and merchants	Annually
<b>NT</b>	Wholesalers	Quarterly
<b>VIC</b>	Wholesalers and producers (with small producers exempt)	Annually
<b>WA</b>	Wholesalers and producers	Annually
<b>ACT</b>	Off premise licensees who sell liquor by wholesale	Annually
<b>TAS</b>	Wholesalers and producers	Unknown
<b>SA</b>	Committed to collecting wholesale data	Unknown

Collection of alcohol sales data from all wholesale and producer liquor licence holders across NSW will allow for better per capita consumption estimates across the state. Such estimates will assist in

identifying emerging trends to support evidence-based policy, regulation and service delivery, and provide an objective measure for evaluating alcohol policy initiatives. It will also assist policy makers to analyse trends and understand the magnitude of alcohol's impact.<sup>19</sup>

Collection of state-wide wholesale data will also enable NSW to participate in the National Drug Research Institute's (NDRI) National Alcohol Sales Data Project. The Project collects wholesale alcohol sales data from the majority of jurisdictions, and contains the most recognised, up-to-date and reliable source of information available in relation to alcohol sales in Australia.<sup>20</sup> State-wide reporting by licensees should follow the recommendations of NDRI and the 2016 Centre for Alcohol Policy Research (CAPR) report.<sup>21</sup> At a minimum, this should include annual reporting of transaction-level sales data detailing type of alcohol, volume and price. The NSW Government should detail the findings and data in an annual report, which should be made publicly available.

It is critical that Liquor & Gaming NSW consider ways that alcohol sales data collection can reliably and accurately occur across NSW. When retail sales data to the public is unavailable, transaction level wholesale data to retailers acts as a good proxy.<sup>22</sup> As a first step, the NSW Government must collect wholesaler and producer alcohol sales data across NSW. Future regulatory responses must be based on adequate data collection if they are to be properly effective.

### **Recommendation**

#### **4. Introduce state-wide wholesaler and producer alcohol sales data collection in line with other states and territories:**

- a. detailing transaction level data including alcohol type, volume and cost as well as the purchasers' retail licence number; and
- b. enabling reporting and participation in the National Alcohol Sales Data Project.

### **Principle 4: Responsibility for regulating liquor licensing should be independent of industry interests.**

Recent changes to the Act, and to the administration of alcohol regulation has disadvantaged communities as business and industry interests are prioritised over community and public health interests. Minor amendments and tweaking eventually undermine alcohol harm prevention policies. The continuous patchy amendment to policies and regulations make community involvement and consultation extremely difficult, advantaging industry consultation and involvement.

The RIS itself acknowledges the pervasive incentives of the liquor industry in this area, and make the case against self-regulation:

*There is not a strong market mechanism to incentivise the liquor industry to develop and comply with rules or a code of practice that would firmly focus on minimising harms to the community, underpinned by a measured, evidence-based approach.*

This does not go far enough. The alcohol industry should not be involved in the development of public health policy. In April 2013, the Director General of the WHO, Dr Margaret Chan reaffirmed WHO's position that the "alcohol industry has no role in the formulation of alcohol policies".<sup>23</sup> In this, and future regulatory reviews, Liquor and Gaming should prioritise the views of the community, public health, emergency services, law enforcement and the medical professions.

While not a matter strictly under review in this consultation, the consultative process has again raised concern about the current positioning of the licensing authority within the Department of Industry

and the potential advantage that gives to commercial interests. In 2015, the NSW Government announced structural reforms to liquor regulation through the relocation of the licensing authority to the Department of Justice,<sup>24</sup> which occurred on 1 February 2016. However on 1 April 2017 the authority was moved back to the Department of Industry. NAAPA believes that the Department of Justice or Department of Health would be more appropriate departments and relocation of the licensing authorities there, or to another department that more directly connects liquor licensing with, and facilitates input from, policing, family and community services, health, justice, land and planning, and local government.

### **Recommendation**

- 5. The NSW Government retain regulatory control of alcohol and ensure that the future development and regulation of alcohol policy is conducted free from industry involvement.**
- 6. Shift the responsibility for regulating liquor licensing from the Department of Industry and relocate the licensing authorities to a department that more directly connects liquor licensing with, and facilitates input from, policing, family and community services, health, justice, land and planning, and local government.**

## **Key issues with the proposed changes**

### **1. Community Impact Statement (CIS)**

NAAPA strongly disagrees with the amendment (Clause 118) exempting applicants from Section 48 of the Act, which is essentially the removal of the requirement for licensees to complete a CIS. Community participation in licensing matters is a function of democratic governance and procedural fairness. It enables local autonomy and informed community choice in the direction of local health, safety and amenity issues related to alcohol. The intent of the CIS is for licence applicants to engage with community stakeholders in order to determine the direct and indirect impact the licenced venue will have on the community. Its removal from the regulations is not a minor change.

### **Process**

The requirement for applicants to complete a CIS is set out under s48(3) of the Act. In s48 a number of exceptions to this requirement are set out, and it is clear that the legislators turned their attention to the circumstances in which it was appropriate for applicants to be exempt from the requirement to provide a CIS. For the subordinate legislation to now provide for an exception so wide that it acts as a de facto abolition of the CIS requirements is not appropriate.

Adding to the irregularity of the current process, the proposal to remove the CIS requirement comes at the same time as an ongoing consultation, *Liquor & Gaming NSW evaluation of the Community Impact Statement requirement for liquor applications*, (the CIS consultation) is being undertaken on this exact topic. Moves to change the regulations before the finalisation and public release of the CIS evaluation report pre-empt the findings and undermine the process.

### **Concerns with the Proposal**

NAAPA's submission to the CIS consultation (at Appendix A) raised the concerns of our members over the deficiencies in the current system. We made a number of positive recommendations in the submission to improve community consultation and the licencing process, not a single one of which was removing the CIS requirement without implementing new safeguards and processes in its place.

Reform of the CIS must ensure that processes address transparency and objectivity, give communities a voice, place the onus of proof on the applicant and sufficiently resource the assessors and regulators.

Without a CIS there is no system or requirement for applicants to assess and determine the impact on the community, or to deliver proof to the community that the impact will not be harmful. Merely notifying stakeholders of an application is not sufficient, as the community does not have the information or resources required to properly assess the notification. Currently community members, law enforcement, health professionals and other interested stakeholders have only 30 days to respond to an application. This is insufficient time to formulate a substantiated evidence-based objection, a task which will be made more difficult without a CIS to reference.

The NSW Government has made commitments time and again to support the community in licensing processes. These words are yet to convert into meaningful action. The community access team is a case in point. Back in 2015, in a media release from the then Deputy Premier, Troy Grant stated that “community members affected by liquor licence decisions will have a far greater say with a new ability to lodge a low-cost appeal...supported by a new community access team who will be dedicated to providing information and education to the general public.”<sup>25</sup> There is limited information about the community access team, and currently no links to them from key community landing pages such as “make a complaint” and “Liquor and Gaming Application Noticeboard”.<sup>26</sup>

In recognition of the substantial barriers the community face in effectively engaging with the licence application process, an independent Community Defender’s Office (CDO), based on the Alcohol Community Action Project (ACAP),<sup>27</sup> should be developed and funded. The CDO is a more effective substitute for the community access team. The CDO should consist of an advisory service and central information service, with staff that have appropriate skills and expertise in alcohol-related planning and licensing systems, including legal skills and an understanding of community needs and expectations. This would help individuals and communities in navigating and interacting with the liquor licensing system.

The proposed changes require stakeholders to oppose new applications at the development application phase (rather than requiring applicants to demonstrate evidence of appropriate community consultation when applying for liquor licences) which undermines the structure of the *Liquor Act 2007*. Scope for rejection of applications for licensed premises at the development applications phase is more restricted, with councils lacking sufficient resources and expertise to fully evaluate the social impact of the harm of alcohol in development applications. Further, the responsibility borne by local governments for licensing decisions is not supported by sufficient guidance or training by Liquor & Gaming NSW.

Liquor & Gaming NSW must prioritise community impact and harm minimisation over business interests. The proposed changes will not assist the Independent Liquor and Gaming Authority (ILGA) in identifying the impact of a licence on the community and will not improve community consultation. Instead of this premature removal, the CIS process should be reformed or replaced as part of the CIS review and with a system that provides targeted support for communities interacting with liquor licensing and planning systems.

## **Recommendation**

### **7. That changes to the Community Impact Statement component of the liquor regulations are made only:**

- a. after the final report of the Community Impact Statement review are made public and reviewed; and

- b. when alternative arrangements are put in place that ensure an equal or greater level of community consultation and risk assessment from the applicant.
8. **That the NSW Government properly resource Independent Liquor and Gaming Authority to monitor compliance and independently assess every application.**
  9. **That an independent Community Defender's Office be established to support communities in licensing matters.**

## **2. Small bar exemptions**

It is important that alcohol sales are regulated in an appropriate and consistent manner to reduce the harm associated with alcohol consumption. Exempting small bars from many of the restrictions of other licence types undermines the intent and effectiveness of the liquor regulations.

The situation as it stands is problematic. Currently small bars are exempt from certain application notification requirements, they do not need to complete a CIS and are afforded automatic extension of trading hours to 2am if requested. The 2016 changes which increased the capacity of small bars from 60 to 100 persons have exacerbated the effect of these exemptions, increasing adverse risk to the community.

There is substantial evidence to demonstrate that the density of liquor outlets contributes to an increase in alcohol harm.<sup>28 29 30</sup> There is no evidence to demonstrate that small bars do not contribute to levels of alcohol harm. Neither does evidence support the view that small bars are inherently safer for patrons on a per capita basis. Regulatory exemptions for small bars should not be granted on this unproven assumption.

Instead of addressing the current issues with small bars, the proposed regulatory changes compound the problems. Section 130 of the proposed Regulation— conversion of existing licences to small bar licences – allows for unlimited conversion of existing licences to small bars. This will increase the number of outlets that are exempt from certain regulatory requirements. The conversion of a licence is a change in licence and as such requires appropriate notification of relevant stakeholders. Licensees should not be able to automatically convert to another licence category without informing and consulting stakeholders, including the community.

A copy of the *Safer places and small bars* report commissioned by FARE and prepared by Adelaide West End Association and Adelaide City Council is enclosed for your information.

### **Recommendation**

10. **Ensure that all licence applicants converting to a small bar licence comply with the same notification requirements as a new liquor licence.**
11. **Improve the consistency of liquor regulation by removing the exemptions for small bars** including:
  - a. The automatic extension of trading hours for small bars to adequately recognise risk associated with late trade.
  - b. The Community Impact Statement and application notification exemptions for small bars to ensure adequate provision for community input to liquor licensing decisions.
  - c. Reinstating the 60 patron limit for small bars.

# Comments on other proposals

## 1. Fees

In a 2013 report, the NSW Auditor-General argued that “the community should not have to continue to pay such a high price for the impacts of alcohol abuse”.<sup>30</sup> In total, the direct cost of alcohol to the NSW Government was estimated to be \$1.029 billion per annum, with the largest costs borne by the NSW criminal justice system (\$474 million), community services for out-of-home care and child protection services (\$263 million), and NSW Health for alcohol-attributable hospitalisations (\$87 million). A further \$204 million was estimated to be lost in productivity due to illness.

One effective approach to recovering costs is by targeting alcohol industry business models that facilitate harmful consumption through risk-based licensing. NAAPA supports the application of risk-based license fees in NSW. Venues that sell alcohol should contribute to the costs associated with the administration of liquor legislation, law enforcement, and the provision of public services responding to alcohol harm (including ambulance and police, emergency departments, social workers, and AOD treatment services).

However, the current fee regime is not sufficient to recoup costs associated with administration of the licensing system. At their current level, the amount recovered is only a small proportion of the cost of administration alone. The Callinan Review into the NSW Liquor Act identified that “the cost of administration of the sales of alcohol far exceeds the revenue derived from it by the New South Wales Government”. In particular, the cost to the Department is \$81 million per annum, while revenue from licences is just \$17 million. This does not take into account the additional burden of alcohol on public services.

For this reason, consideration should be given to increasing fees under the periodic licence fee scheme. In particular, the fees paid by small bars are not reflective of the scale and magnitude of potential harm from these venues.

The small bar anomaly is exacerbated by the exemption of small bars from trading hour components of risk calculations, which fails to recognise the increased risk presented by extended trading hours. Trading hours for all liquor licences, including small bars, should be incorporated into risk calculations under the risk-based licensing fee scheme.

**Table 1: Example of current fees paid by licences**

Licence type	Base fee element	Trading hours risk until 1.30am	Proposed fee
Hotel	5.43 units	27.05 units	\$3248
Club	5.43 units	27.05 units	\$3248
General bar	2.72 units	27.05 units	\$2977
Small bar	2.18 units	n/a	\$218
On-premise	4.35 units	n/a	\$435
Package	5.43 units (≤3 licences)	n/a	\$543
	10.84 units (3 – 9 Licences)		\$1084
	21.66 units (> 9 licences)		\$2166
Producer/wholesaler	2.18 units	n/a	\$218
Multi-function limited	1.1 units	n/a	\$110

An additional concern is that the patron capacity loading element is only applied to licenced venues that are required to pay the compliance history loading element, despite the fact that additional patron numbers is a risk factor independent of compliance history.

### **Recommendation**

- 12. Increase the fees under the periodic licence fee scheme to recover more of the expense associated with administration of the licensing system.**
- 13. Apply the patron capacity loading element to all periodic licences, not just those required to pay the compliance history loading element.**
- 14. Extend scope of risk-based licensing calculations to include extended trading hours for all licences, including small bars.**

## **2. Application notification**

The proposed recommendation increases the notification radius from 100m to 200m and lists additional bodies to be notified of a licence application. Under these proposed changes the prescribed list of bodies to be notified, as set out on page 19 of the RIS, are able to make a submission on the application to the authority. This does not constitute proper community consultation and places the burden of proof onto the community. Furthermore, the increased notification does not go far enough, the consultation list does not include health groups or schools, and 200m is not sufficient.

The NSW Land and Environment Court considers locality as a relative concept in that “the nature of the development and its impacts will influence the scope of the locality to be considered” (para 24).<sup>31</sup> Therefore, the primary trade area for a licensed premise should be considered as the locality for potential impact. Licensees will have already assessed their primary trade area when considering the financial viability of their business model.<sup>32</sup> Changing locality to be the primary trade area will therefore pose no extra onus on applicants as they will have already determined this information. It will also make the licence application process more transparent by increasing the number of community members within the area who are notified.

### **Recommendation**

- 15. Require that all licence applicants notify residents, business and other premises, including schools and health services, within the primary trade area of a licence application.**

## **3. Large-scale events**

NAAPA supports the introduction of large-scale commercial event applications but we disagree with the proposed approach to the fee structure.

As listed in Appendix 1 of the RIS, there are a number of different approaches used by different jurisdictions regarding the fees of large-scale events. Based off the information outlined in Appendix 1, NAAPA recommends an approach more closely aligned with that used in Western Australia (WA) as it is the most effective model currently operating in Australia that utilises the risk-based model.

The proposed NSW model will not sufficiently cover any costs associated with the administration of liquor legislation, law enforcement, and the provision of public services responding to alcohol harm at large-scale events including ambulance, police and emergency departments.



Liquor & Gaming NSW could apply the fee unit structure to the WA model in order to allow for CPI adjustments. The WA approach puts the onus back on the licensee and holds them accountable for the potential level of harm that the event poses to the community. It also incentivises them to consider restricting the size of events and allows the authority to recuperate any administrative and public service costs.

## Recommendation

**16. Introduce the Western Australia model for liquor licence fees of large-scale commercial events.**

## Supporting documentation

The following provides further evidence about community input into liquor licensing decisions. The NSW Government should read these in conjunction with the NAAPA submission.

- Foundation for Alcohol Research and Education (FARE). (2013). *Breaking down barriers: community involvement in liquor licensing decisions in NSW*. Canberra: FARE.
- Manton, E., Room, R., Giorgi, C. & Thorn, M. eds (2014). *Stemming the tide of alcohol: Liquor licensing and the public interest*. Canberra: FARE in collaboration with the University of Melbourne.
- Babor, T., Caetano, R., Casswell, S., et al. (2010). *Alcohol, No Ordinary Commodity: Research and public policy* 2nd edition, Oxford University Press.
- Foster, J., Harrison, A., Brown, K., Manton, E., Wilkinson, C. & Ferguson, A. (2017). *Anytime, anyplace, anywhere? Addressing physical availability of alcohol in Australia and the UK*. London and Canberra: Institute of Alcohol Studies and FARE.
- Muhunthan, J., Angell, B, Wilson, A., Reeve, B. & Jan, S. (2017). Judicial intervention in alcohol regulation: an empirical legal analysis. *Aust NZ J Public Health Online*. Doi: 10.1111/1753-6405.12666
- Adelaide City Council. (2016). *Safer places and small bars*. Canberra: Foundation for Alcohol Research and Education.
- Ziller, A (2018). Online retail of alcohol, some dilemmas for professional SIA practice. *Impact Assessment and Project Appraisal*.

# References

- <sup>1</sup> Department of Industry (nd) *Regulatory Impact Statement Proposed Liquor Regulation 2018* Liquor and Gaming NSW, viewed on 19 July 2018 at <https://www.liquorandgaming.nsw.gov.au/Pages/public-consultation/community-consultation/regulatory-impact-statement-proposed-liquor-regulation-2018.aspx>
- <sup>2</sup> New South Wales Health (2017). NSW health stats. Retrieved from: [http://www.healthstats.nsw.gov.au/Indicatorgroup/indicatorViewList?code=beh\\_alc&topic=topic\\_alcohol&name=AlcoholTopic](http://www.healthstats.nsw.gov.au/Indicatorgroup/indicatorViewList?code=beh_alc&topic=topic_alcohol&name=AlcoholTopic)
- <sup>3</sup> Livingston, M. (2011). A longitudinal analysis of alcohol outlet density and domestic violence. *Addiction* 106(5): 919–25.
- <sup>4</sup> Jochelson, R. (1997). *Crime and place: An analysis of assaults and robberies in Inner Sydney*. Sydney: New South Wales Bureau of Crime Statistics and Research (BOCSAR).
- <sup>5</sup> Briscoe, S. & Donnelly, N. (2001). Temporal and regional aspects of alcohol-related violence and disorder. *Alcohol Studies Bulletin*. Sydney: New South Wales Bureau of Crime Statistics and Research (BOCSAR).
- <sup>6</sup> Morrison, C., Smith, K., Gruenewald, P. J., Ponicki, W. R., Lee, J. P., & Cameron, P. (2016). Relating off-premises alcohol outlet density to intentional and unintentional injuries. *Addiction*. 111(1), 56-64.
- <sup>7</sup> Laslett, A.M., Mugavin, J., Jiang, H., Manton, E., Callinan, S., MacLean, S., & Room, R. (2015). *The hidden harm: Alcohol's impact on children and families*. Canberra: Foundation for Alcohol Research and Education.
- <sup>8</sup> National Health and Medical Research Council (NHMRC). (2009). *Australian guidelines to reduce health risks from drinking alcohol*. Commonwealth of Australia.
- <sup>9</sup> Foundation for Alcohol Research and Education (FARE). (2017). *Annual alcohol poll: attitudes and behaviours*. Canberra: FARE.
- <sup>10</sup> Heather, N. (Date unknown). *National Alcohol Harm Reduction Strategy: Response to consultation document*. Accessed at: <http://www.fead.org.uk/docs/NH4.pdf>
- <sup>11</sup> *Liquor Act 2007* (NSW), section 3(1).
- <sup>12</sup> *Liquor Licensing (Liquor Review) Amendment Act 2017* (SA), section 3(1).
- <sup>13</sup> Loxley, W., Gilmore, W., Catalano, P. & Chikritzhs, T. (2016). National Alcohol Sales Data Project (NASDP) Stage Five Report. WA: National Drug Research Institute, Curtin University. ISBN 978-0-9942806-3-3
- <sup>14</sup> Stockwell, T., Buxton, J., Duff, C., Marsh, D., MacDonald, S., Michelow, W., Richard, K., Saewyc, E., Hanson, R., Cohen, I., Corrado, R., Chow, C., Ivins, A., Nicholson, D., Pakula, B., Puri, A., Rehm, J., Sturge, J., Tu, A. & Zhao, J. (2009). The British Columbia alcohol and other drug monitoring system: Overview and early progress. *Contemporary Drug Problems*, 36(3/4), 459-484.
- <sup>15</sup> Rankin, G. & Livingston, M. (2016). Understanding alcohol sales data in Australia. VIC: Centre for Alcohol Policy and Research (CAPR). Retrieved from <http://www.fare.org.au/wp-content/uploads/research/Understanding-alcohol-sales-data-in-Australia.pdf>
- <sup>16</sup> Loxley, W., Gilmore, W., Catalano, P. & Chikritzhs, T. (2016). National Alcohol Sales Data Project (NASDP) Stage Five Report. WA: National Drug Research Institute, Curtin University. ISBN 978-0-9942806-3-3
- <sup>17</sup> Loxley, W., Gilmore, W., Catalano, P. & Chikritzhs, T. (2016). National Alcohol Sales Data Project (NASDP) Stage Five Report. WA: National Drug Research Institute, Curtin University. ISBN 978-0-9942806-3-3
- <sup>18</sup> Attorney-General's Department SA (2016). Summary of Proposed Changes to the Liquor Licensing Act. Adelaide: Government of South Australia. Retrieved from <http://www.agd.sa.gov.au/sites/agd.sa.gov.au/files/documents/Liquor%20licensing/Summary%20of%20Proposed%20Changes%20to%20the%20Liquor%20Licensing%20Act.pdf>.
- <sup>19</sup> World Health Organization (2014). Global Status Report on Alcohol & Health. Geneva: World Health Organization. Retrieved from [http://apps.who.int/iris/bitstream/10665/112736/1/9789240692763\\_eng.pdf?ua=1](http://apps.who.int/iris/bitstream/10665/112736/1/9789240692763_eng.pdf?ua=1)
- <sup>20</sup> Loxley, W., Gilmore, W., Catalano, P. & Chikritzhs, T. (2016). National Alcohol Sales Data Project (NASDP) Stage Five Report. WA: National Drug Research Institute, Curtin University. ISBN 978-0-9942806-3-3
- <sup>21</sup> Rankin, G. & Livingston, M. (2016). Understanding alcohol sales data in Australia. VIC: Centre for Alcohol Policy and Research (CAPR). Retrieved from <http://www.fare.org.au/wp-content/uploads/research/Understanding-alcohol-sales-data-in-Australia.pdf>

- 
- <sup>22</sup> Loxley, W., Gilmore, W., Catalano, P. & Chikritzhs, T. (2016). National Alcohol Sales Data Project (NASDP) Stage Five Report. WA: National Drug Research Institute, Curtin University. ISBN 978-0-9942806-3-3
- <sup>23</sup> Chan, M. (2013). Re: Doctors and the alcohol industry: an unhealthy mix? *British Medical Journal*
- <sup>24</sup> Department of Justice. (2016). Liquor and gaming reform. Last updated 2 September, 2016 (9:13AM). Accessed 19 July 2018 <https://www.justice.nsw.gov.au/Pages/about-us/liquor-gaming-reform/liquor-gaming-reform.aspx>
- <sup>25</sup> Department of Justice NSW. (2015). Stronger compliance, better community access under liquor gaming reform. Ministerial Media release Saturday, 10 October 2015. Retrieved from <http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2015/compliance-access-under-liquor-gaming-reform.aspx>
- <sup>26</sup> NSW Department of Industry (2018) *Make a complaint*, viewed on 23 July 2018 at <https://www.liquorandgaming.nsw.gov.au/Pages/public-consultation/make-a-complaint.aspx> and *Liquor and Gaming Application Noticeboard*, viewed on 23 July 2018 at <https://www.liquorandgaming.nsw.gov.au/Pages/public-consultation/application-noticeboard.aspx>
- <sup>27</sup> Alcohol Community Action Project (ACAP). (2014). Funded by Australian Rechabite Foundation and the Foundation for Alcohol Research and Education (FARE). Accessed 11 July 2017: <http://acap-nsw.org.au/>
- <sup>28</sup> MCDH Bureau of Disease Control, Prevention & Epidemiology. (2011). *The association of increased alcohol outlet density & related harms: Summary of key literature*. Michigan: MDCH. Accessed at: [http://www.michigan.gov/documents/mdch/Outlet\\_Density\\_Associated\\_Harms\\_Summary-3.10.2011\\_373894\\_7.pdf](http://www.michigan.gov/documents/mdch/Outlet_Density_Associated_Harms_Summary-3.10.2011_373894_7.pdf)
- <sup>29</sup> Livingston, M. (2008). 'A Longitudinal Analysis of Alcohol Outlet Density and Assault'. *Alcoholism: Clinical and Experimental Research* 32(6): 1074-1079.
- <sup>30</sup> Livingston, M. (2011). 'A longitudinal analysis of alcohol outlet density and domestic violence'. *Addiction* 106(5): 919-925.
- <sup>31</sup> *Milne v Minister for Planning & Anor* [No. 2] [2007] NSWLEC 66.
- <sup>32</sup> Foundation for Alcohol Research and Education (FARE). (2013). Breaking down barriers: community involvement in liquor licensing decisions in NSW. Canberra: FARE. Retrieved from <http://fare.org.au/wp-content/uploads/research/Breaking-Down-Barriers-FINAL.pdf>

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