

# Stemming the tide of alcohol

Liquor licensing and the public interest



Edited by **Elizabeth Manton, Robin Room, Caterina Giorgi and Michael Thorn**



# Stemming the tide of alcohol

---

Liquor licensing and the public interest



MELBOURNE SCHOOL OF  
POPULATION  
& GLOBAL  
HEALTH

© Copyright is held by the Foundation for Alcohol Research and Education (FARE) on behalf of the individual authors.

ISBN 978-0-7340-4931-5

First published in August 2014

Apart from fair dealing for the purpose of private study, research, criticism or review, as permitted under the *Copyright Act 1968*, no part of this book may be reproduced by any process without written permission. Enquiries should be addressed to the publisher, FARE.

A copy of this book can be purchased from:

**Foundation for Alcohol Research and Education**

**T:** +61 2 6122 8600

**F:** +61 2 6232 4400

**W:** [www.fare.org.au/shopping](http://www.fare.org.au/shopping)

**Editors:** Dr Elizabeth Manton (Centre for Alcohol Policy Research, Turning Point), Professor Robin Room (The University of Melbourne/Centre for Alcohol Policy Research, Turning Point), Ms Caterina Giorgi (FARE) and Mr Michael Thorn (FARE)

**Copy Editor:** Cathy Edmonds

**Managing Editor:** Jane Yule @ Brevity Comms

**Design and Printing:** Inprint Design and Print

**Cover photographs (L–R):** 'Wine shop' (courtesy of iStock); 'NPX1126089 by Brad Hunter' (courtesy of Newspix); 'Shot glasses of vodka on the bar counter' (courtesy of iStock); 'Kegs' (courtesy of Roel Loopers)

**For citation:** Manton E, Room R, Giorgi C, Thorn M, eds. *Stemming the tide of alcohol: liquor licensing and the public interest*, Canberra: Foundation for Alcohol Research and Education in collaboration with The University of Melbourne, 2014.

## Foreword

When I chaired the National Preventative Health Taskforce from 2008 to 2011, I had the additional responsibility of chairing the development of a national strategy for alcohol, where our goal was to reduce the proportion of Australians drinking at both short-term and long-term risky levels (1:10). One key action area was to 'improve the safety of people who drink and those around them' (1:24).

The Taskforce identified that liquor control laws in each state and territory, and the associated liquor licensing processes, were critical elements in contributing to a safer and healthier Australia by broadening the focus from market demand to consideration of the potential impact on local communities' health, economy and amenity (1:241–2). The Taskforce also identified the need to consider the key roles of police, law enforcement agencies, local communities, local government and the public generally in achieving best practice leading to harm minimisation.

This book, *Stemming the tide of alcohol: liquor licensing and the public interest*, is superbly placed to contribute to achieving this strategic goal. The co-editors are experienced researchers, policy developers and advocates in the alcohol field and have played an important role in pulling together this 24-chapter book by also contributing chapters themselves.

A major strength of the book is the Australia-wide range of contributors. The broad perspectives include sociology, medical anthropology, policing, criminology, epidemiology, marketing, Indigenous health, mental health, alcohol-related violence and liquor legislation, as well as perspectives from public health practitioners, policy developers, lawyers, community advocates, urban planners, social planners, an economist and an auditor-general. I recommend readers study the list of contributors to see the impressive range of people who have worked on this book.

Robin Room clarifies in his opening chapter that the aim of the book is 'to provide policy-makers, public health advocates, researchers, and community groups and members with a handbook that is informative about historical and current trends—how we got here, the current situation and where things are going—and about the state of research evidence on what is effective in what circumstances for public health purposes, and what is not effective'. I can't say it any better.

For too long in Australia the granting, owning and management of alcohol licences have not been taken seriously enough. Given that alcohol is 'no ordinary commodity' (2) and is a social drug that can cause great harm if inappropriately promoted, served or consumed, holding an alcohol licence should imply an obligation of a duty of care.

At a time when concern over the social and health-related impacts of alcohol continues to attract public attention, the role liquor licensing laws can play in addressing those concerns has never been clearer. For example, in January 2014, in response to alcohol-related violence, the New South Wales Government recommended a comprehensive package, including the introduction of 3 am last drinks across an expanded Sydney central business district precinct and 1.30 am lockouts, as well as a new state-wide 10 pm closing time for all bottle shops and liquor stores. But closing times and lockouts are only some of the liquor licensing policy levers available. Read this book to find out more about what can be done.

### **Professor Rob Moodie AM**

Professor of Public Health

Melbourne School of Population and Global Health, The University of Melbourne  
Chair, National Preventative Health Taskforce, 2008–2011

1. National Preventative Health Taskforce. *Australia: the healthiest country by 2020—National Preventative Health Strategy—the roadmap for action*. Canberra: Commonwealth of Australia, 2009.
2. Babor T, Caetano R, Casswell S, Edwards G, Giesbrecht N, Graham K et al. *Alcohol: no ordinary commodity: research and public policy*. 2nd edn. Oxford: Oxford University Press, 2010.



# Contents

<b>Foreword // Rob Moodie</b>	<b>iii</b>
<b>Abbreviations</b>	<b>viii</b>
<b>Introductory overviews</b>	<b>1</b>
1 Regulating Australian alcohol markets for public health and safety // Robin Room	3
2 Liquor licensing in Australia: an overview of the legislative frameworks // Ann M Roche and Tania Steenson	9
3 Public interest objectives and the adoption of harm minimisation // Elizabeth Manton and Grazyna Zajdow	20
<b>Furthering the public interest in licensing decisions</b>	<b>29</b>
4 Effectiveness of public interest arguments in recent case law // Elizabeth Manton	31
5 Regulating to reduce alcohol-related harm: liquor licensing and the harm minimisation test // Sondra Davoren and Paula O'Brien	38
6 Strengthening community input in liquor outlet approvals // Tony Brown	47
7 Community engagement in liquor licensing // Lisa Buffinton	55
8 Social impact assessment in alcohol-related decisions // Alison Ziller	62
9 Liquor licence density and planning // Timothy Bradley	71
10 Liquor regulation: beyond the night-time economy // Michael Livingston	79
<b>Public health strategies</b>	<b>87</b>
11 Licensed venue design and harm minimisation: a neglected domain // Luke Hutchins, Amy Pennay and Alex Wijsmuller	89
12 Entrances to licensed premises in Western Australia: an exploratory study of legislation, policy and practice // Paul Cozens and Shane Greive	99
13 Identifying intoxication: challenges and complexities // Amy Pennay	109
14 Limits on trading hours, particularly late-night trading // Elizabeth Manton, Robin Room and Michael Livingston	122
15 Point-of-sale alcohol promotions—the need for effective regulation // Sandra C Jones	137
16 Risk-based licensing and alcohol-related offences in the Australian Capital Territory // Rebecca Mathews and Tim Legrand	149
17 Liquor accords: do they work? // Elizabeth Manton	158
18 Alcohol Management Plans // Kristen Smith, Marcia Langton, Peter d'Abbs, Robin Room, Richard Chenhall and Alyson Brown	167
<b>Enforcement and outcomes</b>	<b>177</b>
19 Liquor licensing legislation—Australian police perspectives // Roger Nicholas, Allan Trifonoff and Ann M Roche	179
20 Civilian licensing inspectors // Claire Wilkinson and Sarah MacLean	188

21	<b>Effective measures for Dealing with Alcohol and the Night-Time Economy (DANTE)</b> // Peter Miller, Jennifer Tindall, Daniel Groombridge, Christophe Lecathelinais, Karen Gillham, Emma McFarlane, Florentine Martino, Nicolas Droste, Amy Sawyer, Darren Palmer and John Wiggers	196
22	<b>Patron Offending and Intoxication in Night-Time Entertainment Districts (POINTED)</b> // Peter Miller, Amy Pennay, Nicolas Droste, Rebecca Jenkinson, Brendan Quinn, Tanya Chikritzhs, Stephen Tomsen, Phillip Wadds, Sandra C Jones, Darren Palmer, Lance Barrie, Tina Lam, William Gilmore and Dan Lubman	211
23	<b>Effectiveness of Victorian justice strategies in preventing and reducing alcohol-related harm</b> // John Doyle	224
	<b>Final words</b>	<b>233</b>
24	<b>Future directions for liquor licensing legislation</b> // Michael Thorn and Caterina Giorgi	235
	<b>Contributors</b>	<b>242</b>
	<b>Index</b>	<b>247</b>
<b>Figures</b>		
2.1:	Percentage growth in liquor licences in New South Wales, South Australia and Tasmania, and licensed premises in Victoria and Western Australia (as at December 2010; reporting time spans vary across each jurisdiction)	11
12.1:	The legislative framework for managing entrances to licensed premises	101
21.1:	Emergency department attendances, Geelong and Newcastle, during high alcohol hours (HAH) for S&T codes per 10,000 over time (quarterly)	202
21.2:	Assaults trend over time by quarter: Geelong LGA, all hours and HAH, and HAH (in postcode 3220)	203
21.3:	Non-domestic assaults for HAH per 10,000 population in Newcastle/Hamilton (1 January 2001 to 31 December 2009)	204
21.4:	Self-rated intoxication (mean) over time	205
22.1:	Mean BAC level by time of day for each site	213
22.2:	Proportion at different BAC levels for all sites per hour	213
22.3:	Mean energy drinks consumed for each city by hour of day, among those consuming energy drinks	218
22.4:	Percentage of interviewees consuming alcohol mixed with energy drinks for each city by hour of day	218



## Tables

2.1:	Liquor licensing legislation current at the end of 2013	9
2.2:	Number of Australian liquor licences by number of persons aged 18 years (as at December 2010)	11
2.3:	Liquor licensing regulatory structures	13
3.1:	Public interest objectives in liquor licensing legislation in 2012 compared to 1995	22
4.1:	Accessing liquor licensing review cases by state or territory	32
8.1:	Examples of proposed/imposed mitigations and likely outcomes	68
12.1:	Examples of entry requirements for licensed premises in Perth	102
12.2:	Examples of crime precipitators across multiple scales of analysis of Northbridge	105
13.A1:	Australian state and territory laws pertaining to serving 'intoxicated' or 'drunk' patrons and legal definition of 'intoxication' or 'drunk'	116
13.A2:	Guidelines for identifying intoxication	118
14.1:	Ordinary and extended trading hours by licence type and by state and territory	124
14.2:	Percentage of licences with authorised extended hours in Victoria	126
14.A1:	Closing hours for hotel licences, on-premises licences and off-premises licences as prescribed in liquor licensing legislation by state (legislation as of 13 December 2013) and liquor regulations by territory	130
16.1:	Changes in the proportion of offences involving alcohol, including offences relevant to RBL, 2010–12	153
16.2:	Absolute and proportional changes in offences, 2010–12	153
21.1:	Description of alcohol-related interventions implemented in Geelong, Victoria	197
21.2:	Section 104, <i>Liquor Act 1982</i> (NSW), conditions imposed on Newcastle hotels in March 2008	198
21.3:	Perceptions and experiences of crime in the main entertainment precincts	200
21.4:	Support for evidence-based strategies targeting alcohol-related harm in entertainment precincts	201
21.5:	Summary table—patron interviews	205
21.6:	Influence of pre-drinking on violence outcomes: Significance, Odds Ratios and $\beta$ -weights	206
22.1:	Self-reported involvement in aggression in the past three months, by sex, age and city/interview site	214
22.2:	Use of illicit drugs and reported aggressive and offending behaviour in past three months	215
22.3:	Pre-drinking behaviours by sex, age and city/interview location	215
22.4:	Pre-drinking behaviours of drinkers by current night consumption patterns and past three months risk behaviours	216
22.5:	Energy drink consumption by sex, age and city/interview location	217
22.6:	BAC readings, by energy drink consumption behaviours	217
22.7:	Energy drink use and experience of harm in past three months	219
22.8:	Self-reported use of substances other than alcohol during current night out (prior to interview), by city/interview location	219

# Abbreviations

<b>ACAT</b>	ACT Civil and Administrative Tribunal	<b>NED</b>	night-time entertainment district
<b>ACT</b>	Australian Capital Territory	<b>NSW</b>	New South Wales
<b>ADCA</b>	Alcohol and other Drugs Council of Australia	<b>NT</b>	Northern Territory
<b>AFP</b>	Australian Federal Police	<b>NTE</b>	night-time economy
<b>AMP</b>	Alcohol Management Plan	<b>OLGR</b>	Office of Liquor, Gaming and Racing (NSW)
<b>AustLII</b>	Australasian Legal Information Institute	<b>OLGR</b>	Office of Liquor and Gaming Regulation (Queensland)
<b>BAC</b>	blood alcohol concentration (or breath alcohol concentration)	<b>PLA</b>	precinct liquor accord
<b>BYO</b>	bring your own	<b>POINTED</b>	Patron Offending and Intoxication in Night-Time Entertainment Districts
<b>CATI</b>	computer assisted telephone interview	<b>POS</b>	point-of-sale
<b>CBD</b>	central business district	<b>PROMIS</b>	Police Real-Time Online Management Information System
<b>CCTV</b>	closed circuit television	<b>QCAT</b>	Queensland Civil and Administrative Tribunal
<b>CDO</b>	Community Defenders' Office	<b>QCCT</b>	Queensland Commercial and Consumer Tribunal
<b>CIS</b>	community impact statement	<b>Qld</b>	Queensland
<b>DA</b>	development application	<b>RAMP</b>	Risk Assessed Management Plan
<b>DANTE</b>	Dealing with Alcohol and the Night-Time Economy	<b>RBL</b>	risk-based licensing
<b>DHS</b>	Department of Human Services	<b>RFDS</b>	Royal Flying Doctor Service
<b>DJ</b>	disk jockey	<b>RSA</b>	responsible service of alcohol
<b>DOH</b>	Department of Health	<b>RTD</b>	ready to drink
<b>DOJ</b>	Department of Justice	<b>s.</b>	section
<b>ED</b>	emergency department	<b>SA</b>	South Australia
<b>EDO NSW</b>	Environmental Defenders' Office NSW	<b>SALC</b>	South Australian Licensing Commission
<b>FARE</b>	Foundation for Alcohol Research and Education	<b>SIA</b>	social impact assessment
<b>HAH</b>	high alcohol hours	<b>ss.</b>	sections
<b>ID</b>	identification	<b>Tas.</b>	Tasmania
<b>ILGA</b>	Independent Liquor and Gaming Authority (NSW)	<b>VAAP</b>	Victoria's Alcohol Action Plan 2008–2013
<b>KPI</b>	key performance indicator	<b>VCAT</b>	Victorian Civil and Administrative Tribunal
<b>LEC</b>	Land and Environment Court (NSW)	<b>VCGLR</b>	Victorian Commission for Gambling and Liquor Regulation
<b>LGA</b>	Local Government Area	<b>Vic.</b>	Victoria
<b>NCADA</b>	National Campaign against Drug Abuse	<b>WA</b>	Western Australia
<b>NCP</b>	National Competition Policy		

# Introductory overviews

---



# Chapter 1

## Regulating Australian alcohol markets for public health and safety

Robin Room

This book considers the regulation of retail marketing of alcoholic beverages in Australia. It takes the public interest perspective of preserving public health and safety, with attention also to broader issues of community amenity. These issues are usually discussed as 'liquor licensing', and the book includes much attention to legislation and regulation under that heading. But the book also attends to other laws and regulations that govern or affect the retail marketing of alcoholic beverages, such as community planning laws, criminal laws, and sanitary and noise regulations. The aim is to provide policy-makers, public health advocates, researchers, and community groups and members with a handbook that is informative about historical and current trends—how we got here, the current situation and where things are going—and about the state of research evidence on what is effective in what circumstances for public health purposes, and what is not effective.

### Liquor licensing's historical rationale and development

From a public health perspective, alcohol is 'no ordinary commodity' (1). Alcohol plays a causal role in many chronic and infectious diseases and in injuries (2), ranking fifth as a cause of death or disability in the most recent study of the global burden of disease (3). Alongside these harms to the drinker, alcohol causes much social and health harm to others (4)—a major factor in its high rating in comparisons of the intrinsic harms from consumption of psychoactive substances (5). From any political perspective, the substantial burden of harm to others from drinking tends to be a strong argument for societal regulation of drinking.

Although much of the detailed knowledge of alcohol's adverse health and social effects is recent, the recognition that alcohol carries special dangers as a commodity is not new. Restrictions on alcohol as a special commodity are ancient (6), and in Britain, in particular, the increase in availability and affordability of alcoholic beverages in a developing and industrialising society was increasingly seen as a major social problem. The requirement of a licence to sell alcoholic beverages was first established in England in 1552; later, in response to the 'gin epidemic' of the 18th century, as distilled spirits became cheaply available, British parliaments passed a series of laws intended to mitigate the harms, culminating in 1753 in a Licensing Act that required licensees to be 'of good fame and sober life and conversation' (7:80).

British colonisation of Australia thus occurred when British per capita alcohol consumption was substantially higher than today (8), and after British alcohol licensing legislation had been strengthened in attempts to respond to the resulting problems. British licensing approaches and laws were carried over into the Australian colonies, becoming the forerunners of the licensing systems in effect today.

In both Britain and Australia, a further response to the heavy alcohol consumption of the early 19th century took the form of substantial popular temperance movements (9, 10). In the century after

the 1830s, these had substantial effects on popular behaviour and customs, and eventually also on liquor licensing legislation. In Victoria, for instance, a Licences Reduction Board was set up to oversee compulsory state purchase of the most noxious hotels (public houses or 'pubs'); it closed 1054 hotels between 1907 and 1916 (11). The best-known licensing law change of the temperance era was the adoption by popular referendum during the First World War of six o'clock closing for all alcohol sales in four Australian states, a change that lasted until the 1960s in Victoria and South Australia (see Chapter 14). The cumulative result of the strength of temperance sentiment, the licensing restrictions, and the Great Depression was that Australian alcohol consumption per capita in 1933 was only about one-quarter of what it is today (12).

As detailed in Chapters 3 and 4, there have been two general waves of change in Australian liquor licensing since the temperance era. Particularly at the political level, the reaction against the 'wowsers' of temperance was strong and long-lasting (13), and provided a rationale for putting alcohol in much the same class as any other commodity in the push for unfettered markets and competition, which culminated in the National Competition Policy era after 1995. Chapter 3 shows the extent to which public health and safety had been subordinated in the avowed objectives of liquor licensing legislation by 1995. The chapter also provides evidence of the turnaround at the level of avowed objectives that has happened since 1995, with the wide adoption of the public health-oriented objective of harm minimisation in today's liquor licensing laws. This turnaround at the symbolic level can be seen in part as a delayed response to rises in rates of alcohol consumption and problems, and in part as reflecting a turnaround in public opinion on public health-oriented alcohol control policies (14). However, at the operational level of licensing provisions and actions, the trends of increased numbers of licensed outlets, of extended hours of availability and of removal of restrictions on concentration in the industry have generally continued, pushed on by competition policies and market forces.

These trends are increasingly contested in the interests of public health and order and community amenity, and Chapter 5 provides guidance on how the elevation of harm minimisation as a goal of liquor licensing can be used to push forward the public health interest in licensing cases. But it is clear, both from Chapter 5 and from other chapters, that the move towards using liquor licensing and other regulations in the public health interest has so far been partial and patchy. Harm minimisation now receives lip service as a goal, but preserving and promoting commercial interests remains a strong inclination in the interpretation and implementation of Australian liquor licensing laws and regulations.

## The primacy of state and territory in alcohol control

Chapter 2 provides an overview of the current framework of liquor licensing legislation in the six states and two territories in Australia. Implicit in this presentation is the fact that alcohol licensing and the majority of the controls on the alcohol market are a matter of state (and territory) jurisdiction in Australia. The federal level has primary responsibility for quality and other controls on the production of alcoholic beverages, for sales and excise and corporate taxes, and for controls on advertising, promotion and labelling of products—although for advertising and labelling, the jurisdiction is shared with the state level and to some extent with New Zealand. In liquor licensing and in planning and other relevant laws, some roles in regulation are delegated by the states to local government, although usually with a right of appeal from the local level to a state agency or court. Both for liquor licensing and its enforcement and for city planning and other relevant controls on commercial activity, the state and territory level has final responsibility, although for matters like planning the local government often has initial responsibility. Chapter 3 documents the relatively recent rise of harm minimisation as a major objective in licensing laws. This issue is also considered in later chapters. For instance, in Victoria, harm minimisation has been given primacy among objectives in amendments to the liquor licensing law, and Chapter 5 documents how decisions by appeals courts have applied this in Victoria, setting precedents that, it is argued, can be used more widely in Australian licensing cases.

Many of the chapters in this book concern experiences in a particular state or territory. Given this is the level of government at which liquor licensing occurs, analysis needs to be anchored in this level,

and, as a practical matter, authors often have detailed knowledge about their own jurisdictions. But the reader needs to keep in mind that there are substantial variations between states and territories in the relevant laws, regulations, and means and processes of implementation (as tables in Chapters 3, 4, 13 and 14 illustrate).

## Licensing and regulation issues and processes for applications for new outlets

The chapters in this book are divided into three main sections, which examine issues about liquor licensing and the public interest. The first section, 'Furthering the public interest in licensing decisions' (Chapters 4–10), considers how public health and safety issues are addressed in liquor licensing legislation, and how these issues have fared in practice in planning and licensing decisions in recent years. While it is implicit in issuing a licence that it can be retracted, there has been little effort to remove licences in recent decades, and most of the contests over licensing rules and decisions have been concerned with applications for new outlets, which accordingly is emphasised in this section. The section starts with two chapters on objectives in liquor licensing legislation and their implementation in case law. The relatively recent cases drawn on in Chapter 4 suggest the degree to which the application of a harm minimisation criterion is needed in appeals of licensing decisions, which in most states are still tilted quite strongly in favour of commercial interests.

The case considered in Chapter 5 concerns an attempt by the Victorian state agency to impose limits on an existing liquor licence. But, as noted, this is unusual; controversies over liquor licensing have been on applications for new licences or for extensions of existing licences (as illustrated by the nature of the majority of the cases reviewed in Chapter 4). Weakness of enforcement of licensing provisions, a theme in many of the later chapters, is one reason for this imbalance. Another seems to be a tendency to regard an existing licence as a property right of the licence holder rather than as a permit conditional on fulfilling obligations laid down in the law. This tendency is reinforced where licences are held indefinitely (as in Victoria currently) rather than being subject to renewal at regular intervals.

Public health-oriented representations in battles over new licences are hampered by two aspects of the situation. One is that many tribunals or courts have held to the position that the arguments against a licence must point to the occurrence of a concrete harm—an impossible case to make where the licence has not yet been granted. This is the importance of the Victorian court decision reviewed in Chapter 5: that it points a way to making arguments that a tribunal or court in future should accept evidence about probable harm. The other impediment is the confusion that often exists about the fact that two parallel processes—the general planning process and the liquor licensing process—are routine in the approval of a newly built alcohol outlet, and often when an alcohol outlet is to be located in repurposed space.

Chapters 6–8 concern public interest and public health-oriented interventions in one or both of these dual processes. The authors bring their experiences to bear, from different vantage points, on the nature of these processes and the issues that community and other actors need to take into account in participating in the processes. Although New South Wales is the focus, similar processes exist in every jurisdiction. The chapters thus offer not only analysis but also useful advice for anyone seeking involvement in the planning and/or licensing processes.

Chapter 9 considers issues for city and regional planning that are raised by the goal of minimisation of alcohol problems. Although the primary focus is on how harms arising from the high density of outlets may be mitigated in planning decisions, the chapter also considers more general issues of harm reduction as a matter of 'public realm design'.

Chapter 10 points to the importance of more attention to planning and licensing decisions concerning packaged liquor outlets. While primary attention in the media—and often in the laws—has been given to planning and licensing decisions about on-sale outlets, the chapter notes that around 80 per cent

of alcohol sales are made through packaged liquor outlets, and points to recent analyses that have found that changes in the number of packaged liquor outlets in a neighbourhood have more effect on most indicators of alcohol-related harm than changes in the number of on-sale outlets. In this light, the recent change in Victoria to require specific planning approval for packaged liquor outlets, as well as on-sale outlets, is a step in the right direction.

## Specific strategies for harm reduction in licensing and planning requirements

The middle section of this book, 'Public health strategies' (Chapters 11–18), considers a range of tools that have potential to reduce alcohol-related harm, and that can be (or have been) applied through liquor licensing or planning regulations or processes. Chapter 11 considers the available evidence of the potential for harm reduction in an area that has not received enough attention: architectural and design features in licensed premises. This was an area of focus, for instance, in Britain between the wars (15), but has not received much emphasis in current research or professional literature. Chapter 12 looks to the entrance rather than the interior of the on-premises drinking place, exploring how regulation of door staff and its implementation can result in reductions in alcohol-related harm. Chapter 13 considers options and evidence about implementation of the prohibition in every Australian jurisdiction on serving alcohol to someone who is already intoxicated. There is clear evidence, however, that this requirement is not enforced, in part because it is not clearly operationalised, and the chapter considers ways in which this situation could be changed.

Chapter 14 considers evidence of the effects of limiting hours of sales, with particular attention to on-premises sales late at night. These late-night sales are leading features of the night-time economy, which was touted originally as a new commercial opportunity for city centres and entertainment districts but which is now increasingly seen as fostering unacceptable violence and other trouble. The chapter reviews available evidence on the effects of changes in late-night hours of sale. Chapter 15 considers the potential effects on alcohol-related harms of point-of-sale promotions, including price promotions, and concludes that this is an under-regulated area.

The last three chapters in this section consider tools at the community system level for reducing rates of alcohol-related harm. Chapter 16 evaluates the effects of the introduction of a risk-based licensing scheme in the Australian Capital Territory. Such a scheme charges licence fees according to characteristics of the licensed facility, taking into account aspects potentially linked to the probability of alcohol-related harm, such as venue capacity and the lateness of the closing hour. The Australian Capital Territory used the added fees to finance extra positions to enforce the liquor licensing regulations, and it can be argued that the added enforcement was the main mechanism for potential reductions in rates of alcohol-related harm.

Chapter 17 considers the evidence on the effectiveness of a community regulatory mechanism that is widely diffused in Australia, the liquor accord. Typically, such accords involve voluntary participation by licensees in the community, with regular meetings on common issues also involving police and other community actors. Active participation by licensees is often encouraged and sometimes required by state regulators, and public servants and agencies often commit time and resources to fostering the accords. But the evidence of any effects of these essentially voluntary engagements in reducing rates of alcohol-related harm in the community remains elusive, even though they are often judged successful in terms of community building. A more promising approach, in terms of the research evidence, is an Alcohol Management Plan, considered in Chapter 18. These plans, originating primarily in communities with substantial concern about Indigenous drinking, typically involve a more directive role for the local government than liquor accords, a wider range of harm-reducing measures and attention to regulatory enforcement.



## Implementation and enforcement of alcohol control regulations

Although the primary attention in Chapters 11–18 is on specific strategies, the issue of implementation and enforcement of a particular intervention comes up repeatedly in them as a salient issue in effectiveness. This aspect is addressed specifically in Chapters 19–21, which open the third section of this book, 'Enforcement and outcomes'. Chapter 19 offers the perspectives of police on the enforcement of liquor licensing legislation, and Chapter 20 considers the role of civilian licensing inspectors. Such inspectors were reinstated in 2009 in Victoria, after an earlier civilian inspectorate had been abolished some years before. In this circumstance of a new beginning, Chapter 20 offers observations and some evidence on the potential of such an inspectorate for enforcing alcohol controls.

In a comparison of events and trends in two cities, Geelong (Victoria) and Newcastle (New South Wales), Chapter 21 considers the effectiveness of differing strategies for reducing rates of night-time alcohol-related trouble. The evidence is strong that the Newcastle measures, involving a 3.30 am closing time as the centrepiece of several measures (including a 1 am lockout), produced a dramatic reduction in night-time injuries, while there is little evidence of any change in Geelong. Chapter 22 follows up with recent evidence on levels of intoxication increasing as the night wears on in Geelong and four other cities across three states, pointing to earlier closing times as a means for reducing alcohol-related harm.

Chapter 23 reproduces the summary conclusions of a report by the Victorian Auditor-General on the overall effectiveness of the diverse activities of Victorian Government departments in controlling alcohol sales or responding to alcohol-related problems. The summary gives a picture of the wide diversity of actors involved, reports a lack of coordination in their efforts and suggests directions of action to attain a more effective response.

Drawing on the evidence and experience from the previous chapters, Chapter 24 considers future directions for licensing, planning, enforcement and other governmental activities with promise for effectiveness in reducing rates of alcohol-related problems.

## Towards liquor licensing in the interests of public health and community amenity

From some perspectives—for instance, as a specialty in legal practice—liquor licensing is a highly focused specialist area. The rules and precedents are often arcane and changing and not a matter of general knowledge. On the other hand, issues that the field addresses and seeks to influence—issues such as individual safety, comfort and enjoyment in everyday life, the mediation of diverse and often conflicting commercial and community interests, and the promotion of collective benefit and community amenity—are key elements in furthering a good society. Accordingly, as the wide array of authorial expertise and topics in this book illustrates, a consideration of liquor licensing in the interests of public health touches on and involves a variety of academic and professional fields, and reaches across the conventional divisions of societal institutions and government departments. Involving, as it does, issues of the general good, liquor licensing is too important to be left in the hands only of specialists.

The present book is only a beginning to drawing together what is needed in terms of knowledge about effective measures—and about the politics of implementation—for controlling alcohol markets in Australia in the interests of public health and community amenity. The book will have succeeded in its aims if it provides a foundation for new experiments and initiatives to push forward these interests in the next few years.

## References

1. Babor T, Caetano R, Casswell S, Edwards G, Giesbrecht N, Graham K et al. *Alcohol: no ordinary commodity: research and public policy*. 2nd edn. Oxford: Oxford University Press, 2010.
2. Rehm J, Baliunas D, Borges GLG, Graham K, Irving H, Kehoe T et al. The relation between different dimensions of alcohol consumption and burden of disease: an overview. *Addiction* 2010;105(5):817–43.
3. Lim SS, Vos T, Flaxman AD, Danaei G, Shibuya K, Adair-Rohani H et al. A comparative risk assessment of burden of disease and injury attributable to 67 risk factors and risk factor clusters in 21 regions, 1990–2010: a systematic analysis for the Global Burden of Disease Study 2010. *Lancet* 2012;380(9859):2224–60.
4. Laslett AM, Room R, Ferris J, Wilkinson C, Livingston M, Mugavin J. Surveying the range and magnitude of alcohol's harm to others in Australia. *Addiction* 2011;106(9):1603–11.
5. Nutt DJ, King LA, Phillips LD. Drug harms in the UK: a multicriteria decision analysis. *Lancet* 376(9752):1558–65.
6. Room R, Hall W. Frameworks for understanding drug use and societal responses. In: Ritter A, King T, Hamilton M, eds. *Drug use in Australian society*. South Melbourne, Vic.: Oxford University Press, 2013, pp. 51–66.
7. Nicholls J. *The politics of alcohol: a history of the drink question in England*. Manchester: Manchester University Press, 2009.
8. Spring J, Buss D. Three centuries of alcohol in the British diet. *Nature* 1977;270(5638):567–72.
9. Harrison B. *Drink and the Victorians: the temperance question in England 1815–1872*. Pittsburgh: University of Pittsburgh Press, 1971.
10. Fitzgerald R, Jordan TL. *Under the influence: a history of alcohol in Australia*. Sydney: ABC Books, 2009.
11. Public Record Office Victoria. Agency VA 2906 Licences Reduction Board 1907–1968. Melbourne: Public Record Office Victoria, n.d. Accessed 17 February 2014, <[www.access.prov.vic.gov.au/public/component/daPublicBaseContainer?component=daViewAgency&entityId=2906](http://www.access.prov.vic.gov.au/public/component/daPublicBaseContainer?component=daViewAgency&entityId=2906)>.
12. Room R. The dialectic of drinking in Australian life: from the Rum Corps to the wine column. *Australian Drug and Alcohol Review* 1988;7(4):413–37.
13. Room R. The long reaction against the wowser: the prehistory of alcohol deregulation in Australia. *Health Sociology Review* 2010;19(2):151–63.
14. Callinan S, Wilkinson C, Livingston M. *Australian attitudes towards alcohol policy: 1995–2010*. Canberra: Foundation for Alcohol Research and Education, 2013.
15. Gutzke D. *Pubs and progressives: reinventing the public house in England, 1896–1960*. DeKalb: Northern Illinois University Press, 2006.

# Chapter 2

## Liquor licensing in Australia: an overview of the legislative frameworks

Ann M Roche and Tania Steenson

Alcohol has long held a central and defining place in Australian society. For many Australians, alcohol serves an important role in facilitating interpersonal interactions and acts as a pivotal part of social and celebratory occasions (1–5). Similarly, the liquor and hospitality industries feature prominently in society in terms of their commercial and economic functions. However, the way alcohol is consumed, the settings in which consumption takes place and the broader environmental context of drinking can contribute to significant harms and negative outcomes. These harms may be incurred by the individual consumer, by others with whom they have contact or by society at large.

In view of these external costs, governments have adopted strategies to reduce the harms associated with alcohol consumption (3, 6–10), not least of which are the liquor licensing laws and regulations that govern the availability, sale and consumption of alcohol in public places. Australia's liquor licensing laws have evolved over a long period of time. Some of the first liquor licences were issued in Victoria in 1836, as it was considered easier to implement a licensing system that exercised some degree of control rather than prevent the sale of alcohol altogether (11). The reactive manner in which alcohol, and the burgeoning hospitality industry, was generally regulated historically is indicative of the way in which alcohol is still largely regulated in Australia today.

Each Australian state and territory has its own liquor licensing legislation, which is in a constant state of flux, continually evolving and changing to reflect shifts in commercial and community needs, priorities and concerns. As a result, the legislation undergoes periodic amendment. Table 2.1 shows the title of the main liquor control Act in each jurisdiction as of the end of 2013.

**Table 2.1: Liquor licensing legislation current at the end of 2013**

State or territory	Liquor licensing Act
ACT	<i>Liquor Act 2010</i>
NSW	<i>Liquor Act 2007</i>
NT	<i>Liquor Act (no date)</i>
Queensland	<i>Liquor Act 1992</i>
SA	<i>Liquor Licensing Act 1997</i>
Tasmania	<i>Liquor Licensing Act 1990</i>
Victoria	<i>Liquor Control Reform Act 1998</i>
WA	<i>Liquor Control Act 1988</i>

Regulating the manner in which alcohol is sold, promoted and consumed is of pivotal importance in reducing harm (4, 10, 12–14). As the harms associated with alcohol misuse impact individuals, organisations and communities, a multi-layered, cohesive response is required. Due to the complex relationship Australians have with alcohol, regulatory options are required that are innovative, comprehensive and flexible.

There are growing concerns that the current strategies, laws and structures may not be achieving the goal of reducing harm from alcohol use in light of the prevalence of risky drinking behaviours among some population groups. As such, there is increasing interest in the efficacy of liquor licensing laws and in ways that governments may be more proactive in controlling alcohol availability and consumption to reduce alcohol-related harms (4, 10, 12–14).

Liquor licensing legislation creates obligations and allocates responsibility to individuals, businesses and communities for the supply, consumption and promotion of alcohol. It regulates:

- who may sell and supply alcohol
- the commercial practices of licensed premises
- who may consume and access alcohol
- where alcohol may or may not be consumed
- who is responsible for ensuring compliance with the regulations
- the offences, disciplinary procedures and penalties applicable to those who fail to adequately comply with their statutory obligations.

## Unprecedented growth

Over the past 10 to 15 years, there has been unprecedented growth in the availability of alcohol in Australia, in part reflecting an application of National Competition Policy (NCP)<sup>1</sup> principles (4, 10, 15, 18), with a high, if variable, ratio of licences per head of population aged 18 years or more.

Consistent with the growth in numbers of liquor licences, the number of licences per head of population aged 18 years and over has increased. As at June 2010, there were approximately 53,533 liquor licences in Australia. Table 2.2 (on the next page) shows the total number of licences, together with the ratio of licences per head of population aged 18 years or more.

The overall increase in alcohol availability in Australia, as evidenced by the proliferation and concentration of outlets, has resulted in greater opportunities to purchase and consume alcohol. Figure 2.1 (on the next page) shows the percentage growth in liquor licences or licensed premises in New South Wales, South Australia, Tasmania, Victoria and Western Australia (data were not accessible for other jurisdictions at the time of writing). The increase in the number of liquor licences and licensed premises is indicative of the extent to which alcohol has become more readily available, particularly over the past decade.

---

<sup>1</sup> The NCP was implemented by the Australian Government in 1995 to fulfil the government's international trade agreements and ensure Australia's continued economic growth (15). The NCP is underpinned by liberal philosophies that maintain that largely unfettered market forces result in the most efficient processes for distributing goods and services to communities, and that governments should seek to minimise their role in the functioning of the economy. While the ratification of international trade policies may have negatively impacted on the ability of the federal government to enact alcohol laws related to public health (16), the application of the NCP in many states and territories impacted the capacity of states and territories to continue previous controls on the alcohol market, including how many licences were issued in an area (17).

**Table 2.2: Number of Australian liquor licences by number of persons aged 18 years (as at December 2010)**

Jurisdiction	Number of current liquor licences	Australian Population ≥ 18 years old <sup>1</sup>	Population ≥ 18 years per licensed premises
Australian Capital Territory	650 <sup>2</sup>	279,273	430
New South Wales	15,193 <sup>3</sup>	5,601,746	369
Northern Territory	622 <sup>4</sup>	166,626	268
Queensland	6,770 <sup>5</sup>	3,428,226	506
South Australia	5,752 <sup>6</sup>	1,288,256	224
Tasmania	1,433 <sup>7</sup>	388,984	271
Victoria	18,872 <sup>8</sup>	4,316,946	229
Western Australia	4,241 <sup>9</sup>	1,757,448	414
<b>TOTAL</b>	<b>53,533<sup>10</sup></b>	<b>16,948,232</b>	<b>317</b>

1 Source: Australian Bureau of Statistics (19).

2 Source: ACT Office of Regulatory Services (20).

3 Source: NSW Office of Liquor, Gaming and Racing (21).

4 This is the number of full and special continuing licences (which trade for less than 30 hours per week). This number does not include liquor licences for one-off events. The figures refer to the year ended 30 June 2010. Source: the Northern Territory Licensing Commission (22:9, 14).

5 Source: Queensland Department of Justice and Attorney-General (23).

6 Source: Office of the South Australian Liquor and Gambling Commissioner as at 30 June 2009 (as cited in South Australia Police (24)).

7 Source: Tasmania Department of Treasury and Finance as at 10 August 2010 (25).

8 Source: Victorian Department of Justice (26).

9 Source: Western Australia Department of Racing, Gaming and Liquor as at 30 June 2009 (27).

10 This should be regarded as an approximation because the point in time at which these counts occurred varied between jurisdictions. Also note that this does not include the 1484 Special Continuing Licences in the Northern Territory. In addition, some of these 53,533 licences may be inactive or only sell alcohol for limited periods of time.

**Figure 2.1: Percentage growth in liquor licences in New South Wales, South Australia and Tasmania, and licensed premises in Victoria and Western Australia (as at December 2010; reporting time spans vary across each jurisdiction)**



Source: Trifonoff et al. (10)

## Liquor licensing laws in context

Liquor licensing legislation cannot be viewed in isolation. Any examination of the nature and efficacy of Australia's liquor licensing legislation needs to consider factors such as:

- decision-making processes (legal, political and economic)
- implementation and enforcement approaches
- specialised judicial knowledge
- compliance mechanisms (for example, disciplinary mechanisms, motivators, inducements, collaborations)
- knowledge and understanding of the legislation
- assessment of the appropriateness of the legislation
- legislative powers beyond liquor licensing laws relevant to alcohol
- stakeholder influences.

The various administrative, criminal, environmental and planning regulations, which, in combination, are intended to reduce the harms associated with the sale and consumption of alcohol, are implemented at the jurisdictional level. They are often focused on constraining public drinking and related behaviours in specific locations and times (7, 28–35); they do not address drinking that occurs within private homes (36). The regulations are also concerned with preventing undesirable social behaviours and/or prohibiting particular commercial practices.

Liquor licensing laws in Australia are generally developed independently in each state and territory, and hence are characterised by a high degree of diversity and variation. At present, all Australian states and territories adopt administrative licensing schemes to regulate local liquor producers, distributors, retailers and consumers of alcohol in an effort to reduce the individual and external harms associated with alcohol misuse. The liquor legislation in each state and territory contains either an explicit or implicit harm minimisation objective.<sup>2</sup> See Chapter 3 for an analysis of the rise of the harm minimisation objective in liquor licensing legislation.

The legislation defines the administrative agencies involved in liquor licensing, specifies the roles and decisional procedures of administrators, stipulates the boundaries of judicial review, and details the requirements of licensed premises and duties of licensees, staff and customers. Decision-makers are empowered to determine licence applications, including who may sell alcohol, the type of licence granted and, in some circumstances, the conditions of the licence. Table 2.3 shows select aspects of the liquor licensing regulatory structures in each state and territory as of the end of 2013. See Chapter 4 for an analysis of recent decisions in the liquor licensing review process in different jurisdictions.

---

<sup>2</sup> For example, see *Liquor Act 2010* (ACT), ss. 9 and 10; *Liquor Act 2007* (NSW), s. 3; *Liquor Act* (NT), s. 3; *Liquor Act 1992* (Qld), s. 3; *Liquor Licensing Act 1997* (SA), s. 3; *Liquor Control Reform Act 1998* (Vic.), s. 4; *Liquor Control Act 1988* (WA), s. 5. See also *Adeels Palace Pty Ltd v Moubarak*; *Adeels Palace Pty Ltd v Bou Najem* [2009] HCA 48 at 420.

**Table 2.3: Liquor licensing regulatory structures**

State or territory	Administrative authority	Decision-making authority	Review decisions/ hear appeals from decisions	Breaches of conditions/ offences/complaints
ACT	Office of Regulatory Services	Commissioner for Fair Trading	ACT Civil and Administration Tribunal (ACAT)	Commissioner (complaints) ACAT (occupational discipline) Magistrates Court/ Infringement notices (offences)
NSW	Office of Liquor, Gaming and Racing	Independent Liquor and Gaming Authority (ILGA)	ILGA	Director-General of the Department of Trade and Investment, Regional Infrastructure and Services (complaints) Local Court (summary offences and breaches of conditions)
NT	Director of Liquor Licensing	Licensing Commission	Licensing Commission	Licensing Commission (complaints) Magistrates Court (summary offences)
Queensland	Office of Liquor and Gaming Regulation (OLGR)	Commissioner for Liquor and Gaming	Queensland Civil and Administrative Tribunal (QCAT)	OLGR (disciplinary action) Magistrates Court (summary offences)
SA	Office of the Liquor and Gambling Commissioner	Liquor Licensing Commissioner	Licensing Court	Licensing Court (disciplinary matters) Magistrates Court (summary offences)
Tasmania	Liquor and Gaming Branch, Revenue, Gaming and Licensing Division	Commissioner for Licensing	Licensing Board	Liquor and Gaming Branch (complaints) Magistrates Court (offences)
Victoria	Victorian Commission for Gambling and Liquor Regulation (VCGLR)	VCGLR	VCGLR review by panel of three or more commissioners	VCGLR (inquiries and disciplinary matters) Magistrates Court (summary offences)
WA	Department of Racing, Gaming and Liquor	Director of Liquor Licensing	Liquor Commission	Director of Liquor Licensing (complaints) Liquor Commission (disciplinary matters) Magistrates Court (summary offences)

Sources: Trifonoff et al. (36) and relevant state and territory Acts (see Table 2.1)

The lack of cohesive jurisdictional and national approaches that view alcohol misuse as a public health matter impacts negatively on the implementation and efficacy of initiatives to achieve public health goals (37, 38). At present, laws implemented to control the sale and consumption of alcohol do not fall within the definition of public health laws (39); thus, for instance, the Victorian system is in the scope of the Department of Justice rather than the Department of Health. Liquor laws are created, implemented, observed and enforced in response to social attitudes, perceptions and behaviour rather than grounded in evidence-based policy and practice (29, 30, 32–34, 40, 41). They are also subject to political forces and are often highly contested. As a result, efforts to minimise alcohol-related harm through liquor licensing legislation are undertaken in a contradictory social and political environment

where individual responsibility is promoted, the cultural importance of alcohol consumption is reinforced, and the growth of the liquor and associated service industries are facilitated as economic imperatives (32). Furthermore, the legal strategies adopted in relation to alcohol are often ambiguous about whether the consumption of alcohol is a matter of public health or a social concern (2, 6, 42).

## Goals of liquor licensing

Modern liquor licensing schemes adopt risk-based models that aim to facilitate the growth of the hospitality and liquor industries and reduce problems associated with market inefficiencies and failures (1, 2, 7, 10, 38, 43, 44). These goals reflect a partial return to historical attitudes towards the regulation of the liquor and hospitality industries prior to the last decades of the 20th century, when the emphasis shifted to market promotion and free market ideology (see, for instance, the goals of liquor licensing laws in 1995 in Chapter 3). Although many licensed premises are not necessarily problematic, are well run and operate entirely within the law, the overall increase in the availability of alcohol can exacerbate the level of alcohol-related harm in the community. Such problems are also intensified due to the increasing affordability of alcohol, easier access to takeaway products, extended hours of trading (see Chapter 14 on the limits on trading hours) and the culture of the night-time economy (10, 28–32, 45–55).

In societies that promote an ideology of consumption, licensed premises may also become settings in which consumer misbehaviour is tolerated or even promoted (56, 57). In some instances, licensed premises provide a conduit for a wide range of negative behaviours, including excessive consumption of alcohol, aggression and risk-taking behaviours. Such behaviours can have a detrimental impact on the individual, other patrons, staff working at the premises and the public in general (3, 4, 14, 31, 57–60). Hence, there is a need to ensure that the liquor and hospitality industry functions and grows in a manner that is ecologically sustainable, as well as socially appropriate (61). The appropriate development of the liquor and hospitality industries may require the development of new laws, regulatory methods and models of governance, and a reconceptualisation of business, organisational and employee ethics and virtues in order to achieve public health goals (44, 61).

The responsible use of law as a tool to improve public health requires a commitment to the pursuit and application of scientific evidence in relation to how laws are implemented, the effect of the intervention, and the mechanisms employed to affect broader environmental, behavioural and societal outcomes (62, 63). Evaluation of laws is necessary to establish their efficacy and scope for replication in other jurisdictions, to identify which laws are ineffective and to involve the targeted population in proposed strategies (16). This approach is concerned with whether the law can be empirically shown to have an impact on the health and wellbeing of the population, identification of the psychosocial mechanisms through which compliance is achieved, the range of regulatory techniques that may be deployed, and the salience of law as it is implemented in practice and experienced by those it targets (62). Such an approach to liquor laws is warranted as it is not ideologically based and is able to assure the public that government incursions into their freedom are reasonable and evidence-based (16, 62, 64).

## Liquor licensing objectives and harm minimisation

Minimising the harms associated with alcohol is one objective of liquor licensing legislation in Australia. Harm minimisation aims to reduce alcohol-related health, social and economic harms by managing the associated risks. Its focus is risk management. It places an emphasis on decreasing problems rather than decreasing use per se. Examples of harm minimisation elements in the liquor licensing legislation in each jurisdiction are shown in Table 3.1 in Chapter 3.

Reducing the harms associated with alcohol misuse may not be the sole objective of liquor licensing legislation. In many jurisdictions, decision-makers must also consider economic and social imperatives when determining licence applications. Such determinations are based upon what the liquor licensing



authority considers to be in the best interests of the community or in the public interest. This requires a case-by-case assessment of each licence application rather than a general judgment of alcohol-related harms overall.

However, as the criminal sanctions found in liquor licensing legislation are rarely enforced, they lack efficacy in changing venue behaviours and, by extension, reducing the harms associated with alcohol misuse. Although some calls for greater enforcement, as well as increases in the severity of criminal sanctions, have been made by the public health sector (3, 8, 65–72), whether such enforcement would result in reduced alcohol-related harm requires further investigation (62), particularly in an environment of increased alcohol availability and tolerance of determined drunkenness.<sup>3</sup>

The law is a potentially powerful intervention tool that can be used to achieve public health goals. Ensuring that any legal interventions developed to reduce the harms associated with alcohol use are legally valid, effective at changing behaviours and politically viable (16) requires a multidisciplinary approach and systematic evaluation of the infrastructure, interventions and mechanisms employed to confirm their efficacy (62). Any new regulatory approaches should be inclusive, supported by necessary infrastructure and mechanisms, and systematically evaluated to ensure that they achieve their public health objectives.

## References

1. Lindsay J, Kelly P, Harrison L, Hickey C, Advocat J, Cormack S. *'What a great night': the cultural drivers of drinking practices among 14–24 year-old Australians*. Canberra: Australian Government Department of Health and Ageing, 2009.
2. Lindsay J. Young Australians and the staging of intoxication and self-control. *Journal of Youth Studies* 2009;12(4):371–84.
3. Doherty SJ, Roche AM. *Alcohol and licensed premises: best practice in policing: a monograph for police and policy makers (NDLERF)*. Payneham, SA: Australasian Centre for Policing Research, 2003.
4. Roche A, Bywood P, Freeman T, Pidd K, Borlagdan J, Trifonoff A. *The social context of alcohol use in Australia*. Adelaide: National Centre for Education and Training on Addiction (NCETA), 2009.
5. Roche A, Bywood P, Lunnay B, Freeman T, Lawton L, Tovell A et al. *Young people and alcohol: the role of cultural influences*. Adelaide: National Centre for Education and Training on Addiction (NCETA), 2007.
6. Keane H. Intoxication, harm and pleasure: an analysis of the Australian National Alcohol Strategy. *Critical Public Health* 2009;19(2):135–42.
7. Hadfield P, Measham F. Shaping the night: how licensing, social divisions and informal social controls mould the form and content of nightlife. *Crime Prevention & Community Safety* 2009;11(3):219–34.
8. Western Australian Office of the Auditor-General. *Raising the bar: implementing key provisions of the Liquor Control Act in licensed premises*. West Perth: Office of the Auditor General, 2011.
9. National Preventative Health Taskforce. *Australia: the healthiest country by 2020*. Technical report 3: preventing alcohol-related harm in Australia: a window of opportunity. Canberra: Commonwealth of Australia, 2008.
10. Trifonoff A, Andrew R, Steenson T, Nicholas R, Roche A. *Liquor licensing legislation in Australia: part 1: an overview*. Adelaide: Flinders University, National Centre for Education and Training on Addiction (NCETA), 2011.

---

<sup>3</sup> Determined drunkenness refers to the practice of drinking alcohol in order to maximise its psychoactive effects (35).

11. O'Mahony GB, Clark ID. From inns to hotels: the evolution of public houses in colonial Victoria. *International Journal of Contemporary Hospitality Management* 2013;25(2):172–86.
12. Casswell S, Thamarangsi T. Reducing harm from alcohol: call to action. *Lancet* 2009;373(9682):2247–57.
13. Loxley W, Gray D, Wilkinson C, Chikritzhs T, Midford R, Moore D. Alcohol policy and harm reduction in Australia. *Drug and Alcohol Review* 2005;24(6):559–68.
14. Costello D, Robertson AJ, Ashe M. *Drink or drunk: why do staff at licensed premises continue to serve patrons to intoxication despite current laws and interventions? Final report*. Canberra: National Drug Law Enforcement Research Fund, 2011.
15. Hollander R. National Competition Policy, regulatory reform and Australian federalism. *Australian Journal of Public Administration* 2006;65(2):33–47.
16. Christoffel T. Legal approach. In: Li G, Baker SP, eds. *Injury research*. New York: Springer, 2012, pp. 495–506.
17. Roche AM, Bywood P, Freeman T, Pidd K, Borlagdan J, Trifonoff A. *The social context of alcohol use in Australia*. Adelaide: National Centre for Education and Training on Addiction (NCETA), 2009.
18. Livingston M, Chikritzhs T, Room R. Changing the density of alcohol outlets to reduce alcohol-related problems. *Drug and Alcohol Review* 2007;26(5):557–66.
19. Australian Bureau of Statistics. *3201.0—population by age and sex, Australian states and territories*. Canberra: Australian Bureau of Statistics, 2010. Accessed 11 January 2011 <[www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3201.0Jun%202010?OpenDocument](http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3201.0Jun%202010?OpenDocument)>.
20. ACT Office of Regulatory Services. Liquor licence public registers. Canberra: Office of Regulatory Services, 2010. Accessed 20 December 2010 <[www.ors.act.gov.au/community/liquor/liquor\\_licence\\_public\\_registers](http://www.ors.act.gov.au/community/liquor/liquor_licence_public_registers)>.
21. NSW Office of Liquor, Gaming and Racing. Statistics. Sydney: Office of Liquor, Gaming and Racing, 2009. Accessed 30 June 2009 <[www.olgr.nsw.gov.au/industry\\_stats.asp](http://www.olgr.nsw.gov.au/industry_stats.asp)>.
22. Northern Territory Licensing Commission. *Northern Territory Licensing Commission 2009–10 annual report*. Darwin: Northern Territory Licensing Commission, 2010. Accessed 29 April 2014 <[www.nt.gov.au/justice/docs/depart/annualreports/2009\\_10\\_licensing\\_commission\\_report.pdf](http://www.nt.gov.au/justice/docs/depart/annualreports/2009_10_licensing_commission_report.pdf)>.
23. Queensland Government Department of Justice and Attorney-General. Liquor statistics. Brisbane: Department of Justice and Attorney-General, 2009. Accessed 30 June 2009 <[www.justice.qld.gov.au/corporate/about-us/liquor-gaming/liquor/statistics](http://www.justice.qld.gov.au/corporate/about-us/liquor-gaming/liquor/statistics)>.
24. South Australia Police. Alcohol and crime. Adelaide: Government of South Australia, 2010. Accessed 15 January 2014 <[www.police.sa.gov.au/sapol/safety\\_security/alcohol\\_and\\_other\\_drugs/alcohol\\_and\\_crime.jsp](http://www.police.sa.gov.au/sapol/safety_security/alcohol_and_other_drugs/alcohol_and_crime.jsp)>.
25. Tasmania Department of Treasury and Finance. Licensed premises in Tasmania. Hobart: Tasmania Department of Treasury and Finance, 2010. Accessed 23 November 2010 <[www.treasury.tas.gov.au/domino/DTF/DTF.nsf/6f7ab9ece723e864ca25728a00129307/2a23cfeaac81a794ca257354001b2152?OpenDocument](http://www.treasury.tas.gov.au/domino/DTF/DTF.nsf/6f7ab9ece723e864ca25728a00129307/2a23cfeaac81a794ca257354001b2152?OpenDocument)>.
26. Victorian Department of Justice. Liquor licences. Melbourne: Victorian Department of Justice, 2010. Accessed 30 September 2010 <[https://liquor.justice.vic.gov.au/alarm\\_internet/alarm\\_internet.asp?wci=start\\_alarm\\_internet](https://liquor.justice.vic.gov.au/alarm_internet/alarm_internet.asp?wci=start_alarm_internet)>.
27. Western Australia Department of Racing, Gaming and Liquor. *Western Australia Department of Racing, Gaming and Liquor, 2008–2009 annual report*. Perth: Western Australia Department of Racing, Gaming and Liquor, 2010. Accessed 29 April 2014 <[www.rgl.wa.gov.au/ResourceFiles/Publications/Reports/2009/DRGL.pdf](http://www.rgl.wa.gov.au/ResourceFiles/Publications/Reports/2009/DRGL.pdf)>.

28. Hobbs D, Lister S, Hadfield P, Winlow S, Hall S. Receiving shadows: governance and liminality in the night-time economy. *British Journal of Sociology* 2000;51(4):701–17.
29. Rowe D, Bavinton N. Tender for the night: after-dark cultural complexities in the night-time economy. *Continuum* 2011;25(6):811–25.
30. Eldridge A. Public panics: problematic bodies in social space. *Emotion, Space and Society* 2010;3(1):40–4.
31. Fry M-L. Countering consumption in a culture of intoxication. *Journal of Marketing Management* 2010;26(13–14):1279–94.
32. Chatterton P. Governing nightlife: profit, fun and (dis)order in the contemporary city. *Entertainment Law* 2002;1(2):23–49.
33. Talbot D. The juridification of nightlife and alternative culture: two UK case studies. *International Journal of Cultural Policy* 2011;17(1):81–93.
34. Ruuska A. Consequences and behaviour problematised: the establishment of alcohol misuse as an object of empirical inquiry in late 18th- and early 19th-century European medicine. *Nordic Studies on Alcohol and Drugs* 2013;30(1–2):13–32.
35. Measham F, Brain K. 'Binge' drinking, British alcohol policy and the new culture of intoxication. *Crime Media Culture* 2005;1(3):262–83.
36. Trifonoff A, Andrew R, Steenson T, Nicholas R, Roche A. *Liquor licensing legislation in Australia: executive summary*. Adelaide: Flinders University, National Centre for Education and Training on Addiction (NCETA), 2011.
37. World Health Organization. *Addressing the harmful use of alcohol: a guide to developing effective alcohol legislation*. Geneva: WHO, 2011.
38. McMahon K, Opeskin B, Allars M, Carney T, Magnusson R, McMahon K. Health–wealth tradeoffs: national competition policy and public health law. *Journal of Law and Medicine* 2000;8(2):170–96.
39. Gostin LO. *Public health law: power, duty, restraint*. Berkeley: University of California Press, 2000.
40. Pratten AJ. The licensee and problems drinking: a practitioner's view. *Worldwide Hospitality and Tourism Themes* 2009;1(2):194–200.
41. Szmigin I, Bengry-Howell A, Griffin C, Hackley C, Mistral W. Social marketing, individual responsibility and the 'culture of intoxication'. *European Journal of Marketing* 2011;45(5):759–79.
42. Rothstein MA. Rethinking the meaning of public health. *Journal of Law, Medicine & Ethics* 2002;30(2):144–9.
43. Trifonoff A, Andrew R, Steenson T, Nicholas R, Roche A. *Liquor licensing legislation in Australia: part 2: a jurisdictional breakdown*. Adelaide: Flinders University, National Centre for Education and Training on Addiction (NCETA), 2011.
44. Stewart RB. Administrative law in the twenty-first century. *New York University Law Review* 2003;78(437):28 pp.
45. Grover PO. *Preventing problems related to alcohol availability: environmental approaches*. Rockville, MD: Department of Health and Human Services, 1999.
46. Fry M-L. Seeking the pleasure zone: understanding young adult's intoxication culture. *Australasian Marketing Journal* 2011;19(1):65–70.
47. Newton A, Hirschfield A. Measuring violence in and around licensed premises: the need for a better evidence base. *Crime Prevention & Community Safety* 2009;11(3):171–88.

48. Kypri K, Jones C, McElduff P, Barker D. Effects of restricting pub closing times on night-time assaults in an Australian city. *Addiction* 2011;106(2):303–10.
49. Livingston M. A longitudinal analysis of alcohol outlet density and assault. *Alcoholism: Clinical and Experimental Research* 2008;32(6):1074–9.
50. Chikritzhs T, Stockwell T. The impact of later trading hours for hotels on levels of impaired driver road crashes and driver breath alcohol levels. *Addiction* 2006;101(9):1254–64.
51. Hahn RA, Kuzara JL, Elder R, Brewer R, Chattopadhyay S, Fielding J et al. Effectiveness of policies restricting hours of alcohol sales in preventing excessive alcohol consumption and related harms. *American Journal of Preventive Medicine* 2010;39(6):590–604.
52. Rossow I, Norström T. The impact of small changes in bar closing hours on violence: the Norwegian experience from 18 cities. *Addiction* 2012;107(3):530–7.
53. Stockwell T, Chikritzhs T. Do relaxed trading hours for bars and clubs mean more relaxed drinking? A review of international research on the impacts of changes to permitted hours of drinking. *Crime Prevention & Community Safety* 2009;11(3):153–70.
54. Gruenewald P. Regulating availability: how access to alcohol affects drinking and problems in youth and adults. *Alcohol Research & Health* 2011;34(2). Accessed 10 April 2014 <<http://pubs.niaaa.nih.gov/publications/arh342/248-256.htm>>.
55. Popova S, Giesbrecht N, Bekmuradov D, Patra J. Hours and days of sale and density of alcohol outlets: impacts on alcohol consumption and damage: a systematic review. *Alcohol and Alcoholism* 2009;44(5):500–16.
56. Fullerton RA, Punj G. Repercussions of promoting an ideology of consumption: consumer misbehavior. *Journal of Business Research* 2004;57(11):1239–49.
57. Harris LC, Reynolds KL. Jaycustomer behavior: an exploration of types and motives in the hospitality industry. *Journal of Services Marketing* 2004;18(5):339–57.
58. Leo C. When enough is enough! Alcohol servers' refusal styles and key antecedents. *International Journal of Hospitality Management* 2013;35:10–8.
59. Richardson S. Generation Y's perceptions and attitudes towards a career in tourism and hospitality. *Journal of Human Resources in Hospitality & Tourism* 2010;9(2):179–99.
60. Lo K, Lamm F. Occupational stress in the hospitality industry: an employment relations perspective. *New Zealand Journal of Employment Relations* 2005;30(1):23–47.
61. Wijesinghe G. Reimagining the application of sustainability to the hospitality industry through a virtue ethics framework. *Journal of Sustainable Tourism* 2014;22(1):31–49.
62. Burris S, Wagenaar AC, Swanson J, Ibrahim JK, Wood J, Mello MM. Making the case for laws that improve health: a framework for public health law research. *Milbank Quarterly* 2010;88(2):169–210.
63. Chiqui JF, O'Connor JC, Chaloupka FJ. What gets measured, gets changed: evaluating law and policy for maximum impact. *Journal of Law, Medicine & Ethics* 2011;39(s1):21–6.
64. Robert Wood Johnson Foundation. Public health law research: making the case for laws that improve health, 2010. Accessed 12 July 2014 <<http://publichealthlawresearch.org/>>.
65. Stockwell T. Responsible alcohol service: lessons from evaluations of server training and policing initiatives. *Drug and Alcohol Review* 2001;20(3):257–65.
66. Wiggers JH, Jauncey M, Considine RJ, Daly JB, Kingsland M, Purss K et al. Strategies and

outcomes in translating alcohol harm reduction research into practice: the Alcohol Linking Program. *Drug and Alcohol Review* 2004;23(3):355–64.

67. Smith KL, Wiggers JH, Considine RJ, Daly JB, Collins T. Police knowledge and attitudes regarding crime, the responsible service of alcohol and a proactive alcohol policing strategy. *Drug and Alcohol Review* 2001;20(2):181–91.
68. Homel R, McIlwain G, Carvolth R. Creating safer drinking environments. In: Heather N, Stockwell T, eds. *The essential handbook of treatment and prevention of alcohol problems*. West Sussex: John Wiley & Sons, 2004, pp. 235–54.
69. Graham K, Miller P, Chikritzhs T, Bellis M, Clapp J, Hughes K et al. Reducing intoxication among bar patrons: some lessons from prevention of drinking and driving. *Addiction*. 2013; doi: 10.1111/add.12247.
70. Donnelly N, Briscoe S. Signs of intoxication and server intervention among 18–39-year-olds drinking at licensed premises in New South Wales, Australia. *Addiction* 2003;98(9):1287–95.
71. Donnelly N, Briscoe S. *Young adults' experience of responsible service practice in NSW*. Alcohol Studies Bulletin no. 3. Sydney: NSW Bureau of Crime Statistics and Research, 2002.
72. Briscoe S, Donnelly N. *Liquor licensing enforcement activity in New South Wales*. Alcohol Studies Bulletin no. 4. Sydney: NSW Bureau of Crime Statistics and Research, 2003.

# Chapter 3

## Public interest objectives and the adoption of harm minimisation

Elizabeth Manton and Grazyna Zajdow

The previous chapter provides an overview of liquor licensing legislation in Australian states and territories. The emphasis in the current chapter is on changes in the recent historical period; that is, in the past two decades.

In 1995, Craze and Norberry (1) studied liquor licensing legislation in Australia and traced historical trends in its provisions. They analysed the relative priority given to the objective of reducing alcohol-related harm associated with the sale and consumption of alcohol compared to economic or regulatory objectives. Since the 1950s there had been a shift towards deregulation (in favour of industry economic interests) and away from earlier concerns in the 20th century with the restriction of liquor sales. At the time of the 1995 review, Craze and Norberry noted that objectives reflecting public interest concerns were restricted to 'control of under-age drinking', 'public order' and 'local amenity'.

This chapter identifies changes to the objectives of liquor licensing legislation over the past 17 years (between 1995 and 2012) in all states and territories. The 'objects' of the Acts are defined in all liquor licensing legislation (except in Tasmania), but this chapter adopts a broader usage than these formal objects, and considers 'objectives' of the legislation. The use of the term 'objective' implies purpose or intention and has been determined by a close examination of the provisions of each Act. The term does not have a legal meaning (unlike 'objects'), and this chapter must be viewed as a contribution by social scientists to understanding changes in liquor licensing legislation.

After finding that harm minimisation had been adopted in almost all liquor licensing legislation by 2012, we look at how and why it was adopted. We then look at the impacts that the National Competition Policy and the business interests related to the alcohol industry had on limiting its practical implementation.

Craze and Norberry thematically analysed their source documents, and their findings were summarised in Appendix 2 of Stockwell (2) under the four themes of public order, revenue raising/profitability, public health and regulating the industry. Although Craze and Norberry organised public order and public health objectives separately, in practice there is a very large overlap between them. For example, when drinkers are intoxicated and behaving in a loud and disorderly fashion, their behaviour is disruptive to the public order, but their abuse of alcohol also affects their own health; that is, there are also public health implications. The term 'public interest' as used in this chapter combines these public order and public health considerations.

In the current study a thematic analysis (3), assisted by NVivo data management software, of the 2012 liquor licensing legislation (at the end of September 2012) was undertaken. The thematic analysis was restricted to public interest objectives. The 1995 public interest objectives were not obtained directly from the legislation at that time, but from analysing Appendix 2 in Stockwell (2). Table 3.1 in this chapter compares the 1995 and 2012 public interest objectives in liquor licensing legislation in all states and territories.

Although the primary purpose of liquor licensing legislation is the regulation of the sale and supply of liquor, including administration of licences to sell or supply alcohol, in recent years various provisions have been included in the Acts to reduce harm associated with the sale and supply of alcohol. Only some of these provisions are explicitly linked to licensing (that is, they carry the threat of penalties to the licensee or loss of licence if the licensee does not comply). Only objectives associated with these provisions are included in Table 3.1.

## Public interest objectives—changes from 1995 to 2012

In 2012 the two main themes in the public interest objectives in liquor licensing legislation were community amenity and harm minimisation. These are discussed separately below.

### Community amenity

In 1995 almost all states and territories were concerned with preventing, reducing or controlling annoyance or disturbance in or around premises, or, conversely, with maintaining quiet and the good order of the neighbourhood. In 2012 all states and territories made reference to this in their provisions. According to the summaries provided by Craze and Norberry (1), the language of 'amenity' was raised in parliamentary debate in Western Australia and the Australian Capital Territory in 1995, but it was not mentioned in the legislation. By 2012 this had changed. The need to consider the impact of alcohol use and abuse on the amenity of the community was embedded in the objects of liquor Acts in the Australian Capital Territory, New South Wales, the Northern Territory, Queensland, South Australia and Victoria, and in other provisions of the legislation in Western Australia.

Amenity was usually not defined, although Queensland and Victoria were exceptions. In Victoria the definition of amenity was inserted into s. 3A of the *Liquor Control Reform Act 1998* in 2002: 'The amenity of an area is the quality that the area has of being pleasant and agreeable.' In 2011 this was further clarified by s. 3AA, which listed behaviours that constituted evidence of a detraction from amenity, including violent behaviour; drunkenness; vandalism; using profane, indecent or obscene language; using threatening, abusive or insulting language; behaving in a riotous, indecent, offensive or insulting manner; disorderly behaviour; causing nuisance; noise disturbance to occupiers of other premises; obstructing a footpath, street or road; and littering.

In Queensland the definition of amenity was inserted into s. 4 of the *Liquor Act 1992* in 2010:

The amenity of a community or locality means:

- a) The atmosphere, ambience, character and pleasantness of the community or locality; and
- b) The comfort or enjoyment derived from the community or locality by persons who live in, work in or visit the community or locality.

The need to consider the impact on the community had been introduced in all states and territories by 2012. Although there were references to the impact on the neighbourhood in 1995, by 2012 the concept of community was entrenched, even though it was not defined anywhere. Two states, New South Wales and Queensland, had gone further and allowed for community impact statements to be considered when considering a licence application. In Western Australia a Public Interest Assessment was required. These statements canvassed the views of the local community and made the deciding authority aware of the results of discussions between the applicant and the local community. Queensland went even further, classifying some applications as having a significant community impact, which warranted a more stringent process.

**Table 3.1: Public interest objectives in liquor licensing legislation in 2012 compared to 1995**

Objective in liquor licensing legislation	Vic.		NSW		Qld	
	1995	2012	1995	2012	1995	2012
<b>Community amenity</b>						
Prevent or reduce or control disturbance in or around premises, maintain quiet and good order of the neighbourhood (major 1995 theme continued in 2012 provisions)	Z	Y	Z	Y	Z	Y
Community amenity (major 2012 theme in most objects)		X		X		X
Community impact statements				Y		Y
Significant community impact						Y
Public interest assessment						
Noise in special entertainment precinct						Y
Moratorium on extended trading hours						Y
<b>Harm minimisation</b>						
Not serve young people (major 1995 theme continued in 2012 provisions)	Z	Y	Z	Y	Z	Y
Not serve intoxicated persons (major 1995 theme continued in 2012 provisions)	Z	Y	Z	Y	Z	Y
Not permit entry of or have power to remove drunken or disorderly persons (major 1995 theme continued in 2012 provisions)	Z	Y	Z	Y	Z	Y
Harm minimisation (major 2012 theme in most objects)		X		X	Z	X
Encourage responsible attitudes and practices towards the sale, supply, promotion and consumption of liquor (major 2012 theme in objects or provisions)		X		X		Y
Promote individual responsibility						
Restrict access of minors to premises		Y		Y		Y
Liquor accords (with licensee obligation)		Y		Y		Y
Require training		Y		Y		Y
Prohibit promotion of harmful consumption		Y		Y		Y
Restrict supply of undesirable or not supply prohibited liquor products		X		Y		Y
Limit or prohibit sale of liquor on credit						
Power to ban use of glass				Y		Y
Incident registers		Y		Y		Y
Crowd controllers or security staff				Y		Y
CCTV or security cameras		Y		Y		Y
Short-term or emergency closure				Y		
Late hour entry declaration		Y		Y		
Barring , banning, prohibition or exclusion orders (with licensee obligation)		Y		Y	Z	
Safety, health and welfare of persons in licensed premises				Y	Z	X

X = in 2012 objects of Acts; Y = in 2012 provisions of Acts; Z = 1995 themes identified by Craze and Norberry (1); CCTV = closed circuit television



WA		SA		Tas.		ACT		NT	
1995	2012	1995	2012	1995	2012	1995	2012	1995	2012
Z	Y	Z	Y	Z	Y	Z	X		Y
	Y		X				X		X
	Y								
Z	Y	Z	Y	Z	Y	Z	Y	Z	Y
Z	Y		Y	Z	Y	Z	Y	Z	Y
Z	Y	Z	Y		Y	Z		Z	Y
	X		X				X		X
	Y		X		Y		X		X
							X		
	Y		Y		Y		Y		Y
	Y								Y
	Y		Y		Y		Y		Y
	Y		Y				Y		Y
	Y		Y				Y		Y
	Y		Y		Y		Y		Y
			Y						Y
			Y				Y		
			Y					Z	Y
	Y	Z	Y				X		Y

## Harm minimisation

In 1995 harm minimisation was mentioned only in the Craze and Norberry (1) summaries of liquor licensing legislation objectives for Queensland. By 2012, harm minimisation had been included in the objects of the liquor Acts of all states and territories, except Tasmania. The crossover between public health and public order is clear in s. 10 of the Australian Capital Territory *Liquor Act 2010*, where the principles require the liquor industry to be regulated in a way that minimises harm caused by alcohol abuse, including adverse effects on health, personal injury, property damage, and violent or anti-social behaviour. In Victoria, s. 4(2) was inserted in the *Liquor Control Reform Act 1998* in 2009, demonstrating the centrality of harm minimisation: 'It is the intention of Parliament that every power, authority, discretion, jurisdiction and duty conferred or imposed by this Act must be exercised and performed with due regard to harm minimisation and the risks associated with the misuse and abuse of alcohol.'

Not serving or supplying liquor to minors was universal in provisions in the 1995 liquor licensing legislation, but by 2012 the provisions also included restrictions on the access of minors to the licensed premises, or to specified parts of the premises.

By 2012 the need to 'encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor', as in s. 3(2)(b) of the New South Wales *Liquor Act 2007*, was formally included in the objects in five states, but the same meaning could be found elsewhere in the provisions in the other states and territories. There were also two new initiatives in 2012 that were widespread in the legislation: provisions that prohibited promotion of harmful drinking practices and provisions that sought to prohibit the sale or promotion of harmful liquor products.

Not permitting the entry of, or having the power to remove, drunken or disorderly persons was not a new provision in 2012. It was present in six states and territories in 1995, and by 2012 it was present in seven of the eight states and territories. Typically, the person who had been asked to leave was not allowed back on the premises within 24 hours, or sometimes within the vicinity for six hours. Specific legislative power to serve formal barring, banning, exclusion or prohibition orders on individuals had become more common by 2012. The licensee did not always have responsibilities to enforce these provisions.

A range of other new provisions to manage the increased level of alcohol use and abuse, and associated violence, has been adopted since 1995, fulfilling many of the recommendations identified by Craze and Norberry (1:53). In some cases, all the state and territories have adopted the new provisions, whereas, in others, adoption of the provisions is either still in progress or, perhaps, has been judged not to be necessary in the specific jurisdiction. These provisions include:

- training requirements from accredited training providers for licensees or anyone involved in the sale, supply, service or promotion of liquor on the licensed premises, including crowd controllers, as appropriate to their role, as a condition of the licence (all states and territories)
- liquor accords<sup>1</sup> as a way of managing alcohol-related violence (see also Lang and Rumbold (4), which reviews the effectiveness of early liquor accords)
- the power to ban the use of glass
- maintenance of incident registers
- the use of crowd controllers and/or security staff and/or CCTV or security cameras
- the right to close premises down for a specified period if a threat is perceived

---

1 Section 64(1b) of the Western Australian *Liquor Control Act 1988* defines 'liquor accord':

'Liquor accord' means a written agreement or other arrangement (a) that is entered into by 2 or more licensees in a local community, and persons who represent the licensing authority, departments of the Public Service, State agencies or local government, and other persons; and (b) that has the purposes of minimising the harm caused in the local community by the excessive consumption of liquor and promoting responsible practices in the sale, supply and service of liquor in the local community.

This definition is mirrored in the other jurisdictions that have such a provision (see Table 3.1). See also Chapter 17 in this book.

- late hour entry declarations, which aim to prevent patrons entering licensed premises during late trading hours even though the premises are authorised to trade during that time
- limiting or prohibiting the sale of liquor on credit.

Although not imposing obligations on the licensees, restricting alcohol access in specified areas as a way of managing and minimising the associated harms had also become increasingly popular by 2012.

## The origins of harm minimisation and limits on its application

The previous section notes the ubiquity of the term 'harm minimisation' in almost all liquor licensing legislation in Australia. Having harm minimisation as the object in liquor licensing legislation is in line with the National Alcohol Strategy 2006–2011, which states that its goal is 'to prevent and minimise alcohol-related harm to individuals, families and communities in the context of developing safer and healthy drinking cultures in Australia' (5:2). This section looks at how and why this term has become the centrepiece of Australian alcohol policy and legislation.

The term harm minimisation<sup>2</sup> became part of the policy landscape in Australia with the National Campaign against Drug Abuse (NCADA) in 1985. Many public health advocates had argued that the advent of HIV (human immunodeficiency virus) in the early 1980s demanded a response from governments that moved away from the traditional criminalisation of illicit drug use and, by including harm reduction measures such as needle exchanges and opiate substitution therapy, constituted a more pragmatic answer to the problem. The first document published by NCADA stated that its aim was 'to minimise the harmful effects of drugs...on Australian society' (10:1). Along with harm reduction, demand reduction programs, as well as control of supply, were emphasised as principles of the campaign (11:10). By 2006 the policy in relation to illicit drugs included supply and demand reduction, along with harm reduction, and used a wider definition of harm minimisation to achieve this (12:331, 13).

From the very beginning, alcohol and tobacco were part of the NCADA remit, and a subcommittee on alcohol was introduced to report to the Ministerial Council on Drug Strategy (14). In 1986, a draft National Alcohol Policy was presented, which included recommendations related to policies such as the regulation of advertising and marketing, pricing and taxation, and availability of alcohol. These control (or supply and demand reduction) policies were backed up by strong evidence that showed that problems with alcohol were related to consumption of alcohol across a population (15, 16). Thus, lowering the overall consumption of alcohol would lower the prevalence of problems related to alcohol; that is, it would minimise or reduce alcohol-related harm. However, the draft recommendations were eventually watered down in the final version under pressure from various state governments, specifically South Australia, which sought to represent the interests of its wine industry. Opposition to the draft document also came from other alcohol industry groups (14). Rather than incorporating supply or demand reduction programs across a whole population, alcohol policy concentrated on particular at-risk populations, such as minors, drink-drivers and Indigenous

---

2 'Harm minimisation' or 'harm reduction' have both been prominent terms in relation to alcohol since the mid-1980s. Although there has been considerable academic debate about the difference in meanings of the two terms, they have been used interchangeably in much of the literature. Wodak and Saunders (6) argued that there was a difference in meaning between 'reducing/minimising harm' and 'harm reduction/minimisation': 'Reducing harm can...be used to cover any measure which decreases the negative consequences of drug use. These range from reducing supply to interventions which reduce demand...' 'Harm reduction' can then be reserved for those specific measures which prevent the baleful consequences of drug use without...interfering with drug consumption.' Other writers also advocated a limited meaning to the term 'harm reduction', which excluded the necessity for users to stop or limit use but, rather, to use in a safer fashion: 'Harm reduction encourages policy makers to shift drug policies away from punishment, coercion, and repression, and toward tolerance, regulation and public health' (7). In relation to alcohol, Babor et al. (8) define harm reduction/harm minimisation as 'Policies or programmes designed to reduce the harm resulting from the use of alcohol, without necessarily reducing alcohol use per se. Examples include programmes that offer free rides to persons who are too intoxicated to drive their own cars.' Both these definitions use the term to mean a policy or program that does not imply a reduction in use, but a less harmful way of using. In Australia, 'harm minimisation' was eventually used in its broadest sense to include supply and demand reduction, as well as including programs that were interested solely in less harmful ways of using (9).

communities, although the final document did acknowledge that strategies targeting only problem drinkers would be insufficient to be effective. It noted that 'the possibility of decreasing problems by reducing availability should...be given serious consideration' (10:6). This watering down of the effective meaning of harm minimisation in alcohol policy contrasted with the wider meaning adopted in illicit drug policy, as discussed above.

The inclusion of supply reduction within the harm minimisation goal potentially conflicts with a worldwide move towards a neo-liberal mode of governance in most western nations, including Australia, which means the state is directed to not interfere with the free market in consumer commodities, including alcohol. In 1995, all Australian state and territory governments, in conjunction with the federal government, agreed to the National Competition Policy (NCP). The agreements meant that each state reviewed all legislation that involved economic activity to ensure that it did not restrict competition unless the costs of competition were shown to outweigh the benefits. Most states and territories undertook reviews of their liquor licensing legislation to comply with the NCP. The public health objective of reducing alcohol consumption across a whole population would mean many limitations on business and industry and this was clearly not the approach favoured by the NCP or the subsequent state reviews of the legislation. The NCP allowed for public interest tests, but the emphases were on particular at-risk population groups such as minors or drink drivers.

The Queensland and Victorian reviews looked at trends in alcohol consumption historically and in contemporary times, as well as the associated problems. Interestingly, the same academic was employed for both reviews, and he argued that patterns of consumption were more important than overall population consumption. The Victorian review noted that 'alcohol policies have traditionally been predicated on the view that increased availability equals increased consumption...In more recent years, an alternative and perhaps complementary view has developed. That is, the harms associated with consumption should be the focus of attention not consumption per se' (17:38-9). The Queensland review noted that 'Patterns of use, and not availability...per se, are increasingly seen as the key areas which warrant attention to reduce social harms from alcohol' (18:27). However, these views have been challenged by Stockwell (13:271), who argued that 'the idea that a focus on "drinking patterns" somehow frees up alcohol policy from the need to measure and control per capita alcohol consumption is unfounded, however convenient such a view might be for commercial alcohol producers'.

In regards to supply and demand reduction, state governments have few taxation measures available to them, apart from licensing fees. The New South Wales review of its Acts notes that 'open competition should not be considered more important than other public policies objectives', but then also states that 'government regulation can sometimes create unwarranted restrictions that can limit consumer choice, result in higher prices to consumers, stifle innovation or reduce incentives for firms to improve efficiency' (19:1). Since price is one of the main demand reduction policy tools, the NCP rules demanding greater competition might result in reduced prices, thus undermining one of the main drivers to lower alcohol-related harms (8).

State government policy options relate to controlling numbers of licensed premises and advertising of products. One strategy of the NCP in relation to alcohol has been to remove measures that it considers to be monopolies, which makes it difficult for new entrants to enter the market, such as measures that require prospective entrants to prove that there is a need for their particular product (Queensland, New South Wales, Western Australia) or the requirement that off-premises licences must be attached to existing hotels (Queensland). There is no uniformity in legislation, however, particularly in relation to the needs test. The South Australian legislation has a specific clause requiring an applicant for a new licence to prove there is a need for a new venue in a particular locality (*Liquor Licensing Act 1997*, s. 58(1)), while the Victorian Act specifically excludes need as a reason for objecting to a new licence application (*Liquor Control Reform Act 1998*, s. 38(3)(c)). Prior to 1998, Victoria also had regulations that meant that an individual owner could hold no more than 8 per cent of the off-premises licences in the state. This effectively limited the ability of the supermarket duopoly

to move into the market. Although public health advocates argued that the removal of the 8 per cent rule and the supermarkets' move into the market would mean lower prices, this was seen as a good thing from the point of view of competition policy, so the review of the legislation argued that the requirement should be rescinded. When this requirement was lifted, supermarkets quickly moved in to the market and now control a substantial portion of it.<sup>3</sup>

## Conclusions

The language in which public interest objectives are couched has changed since 1995, with a new preference for referring to the impact on community and amenity. Although the objectives still refer to preventing or reducing annoyance or disturbance, the scope has widened to allow a broader interpretation of community and the potential to shift the focus away from disturbance to more positive concepts of character, pleasantness and comfort. The need to allow for impact on the amenity of the community has seen the introduction of such innovations as community impact statements in New South Wales and Queensland and, more broadly, public interest assessments in Western Australia. There is scope for community impact statements and/or public interest assessments to be adopted across all jurisdictions (refer also to Chapter 8 on social impact assessment).

Since 1995 there have been many changes to liquor licensing legislation that purport to strengthen the law's capacity to accommodate harm minimisation as a driving objective. There is scope for all jurisdictions to study the harm reduction management provisions in place in some states and territories and to adopt those that would meet specific needs. However, it should be noted that while these may be worthwhile programs within a larger suite of harm minimisation policies, on their own they have little effect (8, 20).

It is important that harm minimisation is part of liquor licensing legislation, but its practical effects in really reducing harm for individuals, communities and the society at large has been very limited. Even as the meaning of harm minimisation was expanded for illicit drugs to include supply and demand reduction, for alcohol it has been applied in its most narrow form, meaning there have been few efforts in demand or supply reduction, except in relation to particular at-risk populations. Effectively, demand and supply reduction options have been rendered impotent in the face of the requirements of the NCP and the business interests related to the alcohol industry. What has been left in licensing legislation is the possibility of objections to decisions in licensing cases, which is examined in the next chapter.

## References

1. Craze L, Norberry J. The objectives of liquor licensing laws in Australia. In: Stockwell T, ed. *An examination of the appropriateness and efficacy of liquor licensing laws across Australia*. Canberra: Australian Government Publishing Service, 1995, pp. 35–56.
2. Stockwell T, ed. *Alcohol misuse and violence: an examination of the appropriateness and efficacy of liquor licensing laws across Australia*. Canberra: Australian Government Publishing Service, 1995.
3. Braun V, Clarke V. Using thematic analysis in psychology. *Qualitative Research in Psychology* 2006;3(2):77–101.
4. Lang E, Rumbold G. The effectiveness of community-based interventions to reduce violence in and around licensed premises: a comparison of three Australian models. *Contemporary Drug Problems* 1997;24(4):805–26.

---

<sup>3</sup> Figures for 2008 show that three supermarket outlets (Coles, Woolworths and Aldi) hold almost 30 per cent of the packaged alcohol outlets. This underestimates the volume of alcohol sold because Coles and Woolworths also own many of the mass retail outlets such as Dan Murphy's and Liquorland.

5. Australian Government Ministerial Council on Drug Strategy. National Alcohol Strategy 2006–2011. 2006. Accessed 26 March 2013 <[www.alcohol.gov.au/internet/alcohol/publishing.nsf/Content/nas-06-09](http://www.alcohol.gov.au/internet/alcohol/publishing.nsf/Content/nas-06-09)>.
6. Wodak A, Saunders B. Harm reduction means what I choose it to mean. *Drug and Alcohol Review* 1995;14(3):269–71.
7. Levine HG, Reinerman C. *Alcohol prohibition and drug prohibition. Lessons from policy for drug policy*. Amsterdam: CEDRO, 2004.
8. Babor T, Caetano R, Casswell S, Edwards G, Giesbrecht N, Graham K et al. *Alcohol: no ordinary commodity: research and public policy*. 2nd edn. Oxford: Oxford University Press, 2010.
9. Room R. The ambiguity of harm reduction—goal or means, and what constitutes harm? In: Rhodes T, Hedrich D, eds. *Harm reduction: evidence, impacts and challenges*. EMCDDA Monograph 10. Luxembourg: European Monitoring Centre for Drugs and Drug Addiction, 2010, pp. 108–11.
10. Ministerial Council on Drug Strategy Sub-Committee. *National health policy on alcohol in Australia and examples of strategies for implementation*. Canberra: Commonwealth of Australia, 1990. Accessed 11 June 2013 <[www.nationaldrugstrategy.gov.au/internet/drugstrategy/publishing.nsf/Content/4584407086E6AB7ACA2575B4001353FE/\\$File/ndsp7-8.pdf](http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/publishing.nsf/Content/4584407086E6AB7ACA2575B4001353FE/$File/ndsp7-8.pdf)>.
11. Blewett N. *National campaign against drug abuse: assumptions, arguments and aspirations*. Canberra: Australian Government Publishing Service, 1987.
12. Room R. Alcohol and harm reduction, then and now. *Critical Public Health* 2004;14(4):329–44.
13. Stockwell T. Alcohol supply, demand, and harm reduction: what is the strongest cocktail? *International Journal of Drug Policy* 2006;17(4):269–77.
14. Hawks D. The formulation of Australia's national health policy on alcohol. *Addiction* 1993;88(Supplement):19S–26S.
15. Bruun K, Edwards G, Lumio M, Pan L, Popham R et al. *Alcohol control policies in public health perspective*. Helsinki: Finnish Foundation for Alcohol Studies, 1975.
16. Skog O-J. The collectivity of drinking cultures: a theory of the distribution of alcohol consumption. *British Journal of Addiction* 1985;80(1):83–99.
17. Victorian Government. *Liquor Control Act 1987 review*. Melbourne, 1998. Accessed 9 April 2013 <<http://ncp.ncc.gov.au/docs/Victorian%20review%20of%20the%20Liquor%20Control%20Act%201987,%20April%201998.pdf>>.
18. Queensland Government Department of Tourism, Sport and Racing. *National competition policy review of the Queensland Liquor Act 1992*. 1999. Accessed 24 March 2014 <<http://ncp.ncc.gov.au/docs/Qld%20review%20of%20the%20Liquor%20Act%201992,%20August%201999.pdf>>.
19. NSW Department of Gaming and Racing. *National competition policy review: New South Wales Liquor Act 1982 and Registered Clubs Act 1976: final report*. 2003. Accessed 26 March 2013 <[www.olgr.nsw.gov.au/pdfs/ncp\\_liquor\\_club.pdf](http://www.olgr.nsw.gov.au/pdfs/ncp_liquor_club.pdf)>.
20. Loxley W, Gray D, Wilkinson C, Chikritzhs T, Midford R, Moore D. Alcohol policy and harm reduction in Australia. *Drug and Alcohol Review* 2005;24(6):559–68.

# Furthering the public interest in licensing decisions

---





# Chapter 4

## Effectiveness of public interest arguments in recent case law

Elizabeth Manton

The previous chapter traces recent historical trends in the public interest objectives of liquor licensing legislation, the origins of the adoption of the harm minimisation objective, and the impact of the National Competition Policy and industry interests on limiting the practical implementation of this objective.

In this chapter I examine how the legislatively defined objection and complaints processes have been used to challenge these constraints. By studying recent case law, I examine the extent to which the public interest features in objections to liquor licence applications or complaints about licensees, and examine, in particular, the public interest arguments and objectors that have been most effective. This analysis has been conducted from a social science perspective, using the techniques of thematic analysis, rather than a legal perspective. The latter perspective would seek to understand the intention of the legislation by supplementing analysis of case law with reference to other secondary sources, such as an explanatory memorandum to a new Act or second reading parliamentary speeches as documented in Hansard. However, in this chapter I restrict the thematic analysis to recent case law.

For Victoria, in particular, this extends recent research relating to 47 cases heard by the Victorian Civil and Administrative Tribunal (VCAT) from 2001 to 2011 that reviewed licensing decisions concerning refusal or restriction of liquor licences, or establishing or maintaining existing licences (1). Nand found that the most successful arguments based on amenity related to interference with the quiet of the neighbourhood, while the most successful arguments based on harm minimisation related to the likelihood that a licence would increase underage drinking. She also found in her analysis that there was a one in three chance of objectors being successful at the VCAT review level (1:2–3).

There are some pitfalls in undertaking such research, as the liquor licensing environment is changeable. For example, in Western Australia licences were easy to obtain after 2007 reforms, which aimed to promote a more dynamic liquor environment. But by 2010 concern with a failure to demonstrate adequate consideration of the public interest had been raised, and by the end of 2011 many applications were being refused (2).

The significance of undertaking this study of liquor licensing review decisions is that the findings can be used to support a more effective representation of the public interest in objections to liquor licensing applications, and in complaints against licensees. The findings should be of interest to local government (which increasingly is being asked to undertake a more active role in the process (3)), to the public and to lobby groups that represent the interests of the public.

To examine the application and effectiveness of public interest objectives embedded in liquor licensing legislation, 50 cases relating to reviews of objections to liquor licence applications or complaints about licensees were thematically analysed (4), assisted by NVivo data management software. Prior to this analysis, the question of who was entitled to make an objection or complaint was analysed.

The process by which initial liquor licensing decisions are made in the states and territories, and the process for reviewing the initial decisions, is summarised in Chapter 2. The later stage of the 'appeal'

process is not covered, as that generally is made to a higher court of appeal and its resolution is determined on points of law. A Victorian review case, which has been the subject of one such appeal, is the subject of the next chapter.

The most recent cases involving objections to liquor licences or complaints about liquor licensees, or reviews of the associated decisions, were identified in the first instance by reference to the Australasian Legal Information Institute (AustLII) website. This website provided cases for analysis for the Australian Capital Territory, the Northern Territory, Queensland, South Australia, Victoria and Tasmania. No decisions were available for New South Wales through AustLII but 'decisions of interest' were available on the New South Wales Liquor and Gaming Authority website. In Western Australia no decisions were available through AustLII but reviews were available on the Liquor Commission website. Table 4.1 shows how many recent (since 2008) review cases were available to analyse. The 10 most recent cases until the end of September 2012 were selected for thematic analysis in each state, with the exception of Tasmania, the Australian Capital Territory and the Northern Territory, which each had only one recent (since 2008) case available for analysis. This means that 10 cases in each of five states were analysed. Most of these cases considered applications for liquor licences or changes to conditions of the licence. Only six of the 50 cases dealt with a disciplinary case against a licensee (three in Queensland, two in Western Australia and one in New South Wales).

**Table 4.1: Accessing liquor licensing review cases by state or territory**

State or territory	Number of cases available for analysis since 2008
ACT	One ACT Civil and Administrative Tribunal case
NSW	57 'decisions of interest' selected by NSW Independent Liquor and Gaming Authority
NT	One case
Qld	17 Queensland Civil and Administrative Tribunal decisions
SA	20 South Australian Licensing Court decisions
Tasmania	One case
Victoria	27 Victorian Civil and Administrative Tribunal decisions
WA	71 Liquor Commission of Western Australia cases

## Objection and complaints processes

The question of who may make an objection or complaint was identified in all jurisdictions for objections and six out of eight states or territories for complaints. There is wide variation between states and territories.

At its simplest, any person may lodge an objection in South Australia, the Australian Capital Territory and Tasmania. People are also allowed to lodge an objection in New South Wales, 'subject to, and in accordance with, regulations' (*Liquor Act 2007*, s. 44(1)). Other states or territories allow an individual to lodge an objection, but they have to demonstrate that in some way they have a particular interest in the case. For example, in Queensland such a person has to have 'a proper interest in the locality concerned' and be 'likely to be affected by the grant of the application' (*Liquor Act 1992*, s. 119(5)). In Western Australia an objector has to have 'a proper interest in the matter in question' (*Liquor Control Act 1988*, s. 70(1)). In the Northern Territory they must work, reside, own or lease property in the neighbourhood (*Liquor Act*, s. 47F(3)). Queensland also allows a petition to be submitted but the signatories must all state their connection to the locality. Local government is specifically mentioned as being able to lodge an objection in South Australia, Victoria and Western Australia. The Commissioner of Police is specifically mentioned in South Australia, Victoria and Western Australia, whereas any member of the police force, the Fire and Rescue Service, a public authority

or community-based organisation is able to lodge an objection in the Northern Territory. Finally, in Victoria a licensing inspector is also able to lodge an objection.

The entitlement to complain is explicit in six states or territories. Any person is able to complain in the Australian Capital Territory and the Northern Territory. People are also allowed to complain in New South Wales, South Australia or Western Australia, but with detailed conditions concerning how their interests might be affected. Those interests might be an adverse impact (New South Wales and South Australia), financial or otherwise (New South Wales), or quite a long list of prescribed connections, such as being the parent of a child who attends a school or a patient in a hospital in the vicinity of the licensed premises (Western Australia). Local government is specifically mentioned in South Australia, Victoria and Western Australia, and the Commissioner of Police in New South Wales, South Australia, Victoria and Western Australia, as potential complainants. In Western Australia, government agencies or statutory authorities are also named as potential complainants. Only in Victoria is a licensing inspector specifically identified as having the power to make a complaint.

## Effectiveness of public interest arguments in recent case law

### South Australian Licensing Commission

The 10 most recent cases heard by the South Australian Licensing Commission (SALC) represent a range of cases involving objections to applications, but no complaints against an existing licensee. The cases cover a period from December 2009 to July 2012. Only two of the cases were reviews of previous decisions by the Liquor and Gambling Commissioner, making the South Australian cases different from the cases analysed in the other states, which were almost all review cases. Two applications were successful for the licensee without qualification, while six applications were successful with conditions. Only one application was rejected (that is, was not decided for the licensee), while one further application was rejected on one count but successful on another. The most frequent objector was the City of Adelaide (in five cases), followed by other businesses (four cases), residents (four cases) and the Commissioner of Police (three cases). In three cases a pre-hearing conference was organised and the objections were withdrawn subject to conditions being imposed. The conditions set on licences were frequently long and complex.

The most common grounds for objection were noise and, more generally, disturbance, nuisance or annoyance (including noise), as allowed by s. 77 of the *Liquor Licensing Act 1997* (SA). All cases in which noise and disturbance were raised by objectors resulted in conditions being imposed on the licensee. The imposition of conditions 'to ameliorate the concerns of nearby residents or businesses' was identified as a common practice of the court and the Commissioner (*Olivia Bay Pty Ltd, MJ Lunniss Investments Pty Ltd & Daly Waters Property Pty Ltd* [2009] SALC 35). However, the objectors had to prove 'undue' disturbance, where undue was defined in s. 44 of the *Liquor Licensing Act 1997*, and residents living near a hotel were expected to tolerate a degree of disturbance.

The objective of harm minimisation did not appear to affect outcomes. An application for a retail liquor outlet in an area that provided meals and services to homeless and vulnerable people, many of whom were alcohol abusers, was successful, with the only condition being a requirement to consult with Adelaide City Council about possible restrictions (*Liquorland* [2011] SALC 27). In the cases studied, licensee mismanagement or ignorance was never grounds for refusal of an application and there was a preparedness to allow for licensees to change their previous behaviour (*Queens Head Hotel* [2012] SALC 79).

Of the two cases in which the licence application was refused, the first was an application for a special circumstances licence in which it was judged that an existing restaurant licence was sufficient; there were no objectors in this case. In the case in which an application for a changed condition was refused on one count (trading after midnight), but successful on another (serving alcohol in a

cinema complex for consumption during movies), the objectors were the City of Marion and the Commissioner of Police, who were both concerned about underage drinking. The requirement to cease trading at midnight was not a decision made in response to those objections.

## Queensland Civil and Administrative Tribunal and Queensland Commercial and Consumer Tribunal

The 10 most recent cases heard by the Queensland Civil and Administrative Tribunal (QCAT) (2010 to 2012) and the Queensland Commercial and Consumer Tribunal (QCCT) (pre-2010) were analysed. Several QCAT cases were discarded from this analysis, as their substance was about points of law or administrative details (for example, admissibility of evidence, an application for costs or extensions of time for the review process). The cases that were analysed covered a period from October 2009 to September 2012, and all were review cases. The cases cover reviews of decisions regarding applications for a change in the conditions of a licence (five cases), reviews of disciplinary proceedings (three cases) and reviews of decisions regarding applications for a liquor licence (two cases). Four review cases found for the licensee, four found for the licensee but imposed extra conditions, and two cases found against the licensee.

All three cases reviewing disciplinary actions imposed originally by the Office of Liquor and Gaming Regulation resulted in more favourable outcomes for the licensees. Residents or other businesses were the most frequent external objectors in the review applications, but in none of these cases were the objectors successful. The importance of having multiple objectors, including police and the relevant local government, was made clear (*Body Corporate for 'Seacrest Apartments' v Chief Executive, Office of Liquor and Gaming Regulation* [2011] QCAT 243).

The most common grounds for objection, cited in eight of the 10 cases, were annoyance, disturbance or inconvenience, as allowed by s. 119(a) of the *Liquor Act 1992* (Qld); noise was also singled out in five cases. The remaining clauses of this section of the Act—covering (b) harm from alcohol abuse and misuse and associated violence; (c) an adverse effect on the health or safety of members of the public; or (d) an adverse effect on the amenity of the community—were specifically cited in five of the 10 cases.

In the three disciplinary review cases, which all involved intoxication on the premises, violence, threatening behaviour and assault, all the cases were decided for the licensee. For example, in one case in which evidence was tendered by the police of a long history of incidents relating to assault, extreme intoxication and fighting, the initial disciplinary action included a fine, suspension of the licence for two days, a requirement for the licensee to complete a Responsible Management of Licensed Venue course, a reprimand to the licensee and several variations of the conditions of the licence. In arguing for a review of this decision, the licensee 'stressed that he was doing everything possible to ensure that there were no more incidents of the kind that had occurred previously' (*Philham Investments Pty Ltd t/a West Coast Hotel v Chief Executive, Department of Employment Economic Development and Innovation* [2009] CCT LR009-09). In reviewing this initial disciplinary action, there was a willingness to give the licensee the benefit of the doubt that his capacity to responsibly manage alcohol consumption on the premises had changed; the suspension of the licence for two days was set aside in part because of the potential for economic hardship, and the fine was considerably reduced.

In the two licence application review cases that found against the licensee, in one case an initial decision not to grant a change in the licence to allow trading between 3 am and 5 am was upheld; in the second, an initial decision to impose a licence condition of no more than 60 patrons on the licensed premises at one time was upheld. In neither of the refusal cases were any objectors' views cited in the review, although they may have been in the original decision.

## Liquor Commission of Western Australia

The 10 most recent cases heard by the Liquor Commission of Western Australia represent eight reviews of decisions to refuse the granting of a liquor licence application and two reviews of licence conditions imposed after complaints against a licensee. The cases covered a period from March to September 2012. Several cases within that time period were discarded from the analysis because they dealt primarily with procedural matters; there was also one case involving the barring of an individual. All the reviews of decisions to refuse liquor licence applications confirmed the original refusal decision by the Director of Liquor Licensing. The two complaints against licensees were upheld. They both involved a fine, together with significant changes to licence conditions. The Commissioner of Police and the Executive Director of Public Health lodged objections in six and five cases respectively, covering seven of the eight licence applications between them. Residents also objected in four cases. The local government was only involved as an objector in one case.

Throughout the review process, the most commonly advanced arguments referred to harm minimisation—both in general and relating to minors and vulnerable ‘at risk’ populations—and the impact on community amenity and disturbance, mirroring the aspects highlighted in s. 38(4) of the *Liquor Control Act 1988 (WA)* (amended in 1998 and 2006) and as allowed in the objection process according to s. 74(b).

However, overwhelmingly the liquor licence applications failed because applicants failed to provide substantive evidence to support their cases that their applications were in the public interest. As Trifonoff et al. (5:46) noted, Western Australia is presently unique in Australian jurisdictions in placing the onus on the applicant to demonstrate that granting a liquor licence is in the public interest, as outlined in s. 38(4) of the *Liquor Control Act 1988* (amended in 2010).<sup>1</sup> Although the Department of Racing and Gaming provides guidelines on how to address this requirement by completing a formal Public Interest Assessment (7), the quality of evidence submitted with the licence applications was not high enough (Mirvac Hotels Pty Ltd (LC07/2012)). Moreover, in the case decisions it was made apparent that there was a need not only to prove that granting the licence would not be contrary to the public interest, but that applicants had to actually show how it would further public interest (Cranbrook Food Services Pty Ltd (LC30/2012)). This failure to complete the Public Interest Assessments satisfactorily was alluded to earlier by Mossenson et al. (2), who concluded that cases that were prepared with professional assistance (such as these authors offered) had a greater chance of success. However, when it came to the two complaints cases under review, the Commission was more disposed to avoid the ‘drastic’ option of licence cancellation (Tocoan Pty Ltd (LC25/2012)).

It is difficult to ascertain the influence of the high level of objections outlined above because the Liquor Commission’s standard response was not to overturn denials of the applications on review because of the lack of objective evidence in their support.

## New South Wales Independent Liquor and Gaming Authority

The 10 most recent cases heard by the New South Wales Independent Liquor and Gaming Authority and made available as ‘decisions of interest’ represent reviews of decisions to change conditions of a licence (six cases), applications for a liquor licence (three cases) and a disciplinary complaint (one case). The cases covered a period from October 2011 to September 2012. Several cases within that time period were discarded from the analysis because they dealt with procedural matters or were not primarily related to alcohol.

Perhaps because these cases were selected for posting by the Authority as ‘decisions of interest’ intended to explain the reasons for decisions, they had a high percentage of refusals and no conclusions can be drawn about refusal rates. Seven of the cases ended in refusal for the licensee,

---

<sup>1</sup> It should be noted that public interest in this context is not the same as public interest in the context of the National Competition Policy, in which a key principle is that ‘competitive markets will generally best serve the interests of consumers and the wider community’ (6).

one had success, one had success with conditions, and one had partial success (approval to revoke some licence conditions but refusal to revoke others).

Police submissions played an active role in decisions that went against the potential licensees. Local governments objected in two cases, while residents objected in three cases. A slight difference compared to the other states was the involvement of a school and a church in objecting. NSW Health also objected in two cases, and its submissions contributed to decisions that went against the licence applicants. In the case in which the only objectors were residents, the case was successful for the licensee, except that new conditions were imposed to address the residents' concerns.

The most common grounds for objection were the potential for disturbance, the impact on the amenity of the community, and the potential for harm arising from violence and other anti-social behaviour. Social impact was also important (8:para 40).

The disciplinary complaint lodged by the police against a licensee's fitness to manage ended in the licensee being barred from holding a liquor licence for five years, but the licence itself was not revoked, out of consideration for the economic impact on the landlord of the premises.

## Victorian Civil and Administrative Tribunal

The 10 most recent review cases heard by VCAT cover reviews of eight applications for liquor licences and two applications for changes to the conditions of the liquor licences. There were no complaints or disciplinary review cases in this period. The cases cover a period from June 2009 to September 2012. Under new legislation, VCAT has now been removed from the review process, and a review is heard by a panel of the Victorian Commission for Gambling and Liquor Regulation (VCGLR). Two cases were heard by the VCGLR before the end of September 2012 (both in July 2012), but these were not included in the analysis. The outcomes of the reviews were success for the licensee but with changes to the conditions of the licence (five cases), success for the licensee (three cases), success for the licensee in having some conditions of the licence overturned but not others (one case) and failure for the licensee (one case). The objector in seven of the review cases was the applicant for the liquor licence, who was seeking to have the decision of the Director of Liquor Licensing overturned. One objector was a council. Residents objected in one case and a community action group objected in another.

As allowed by s. 38 of the *Liquor Control Reform Act 1998*, the most common grounds for objection were noise and the impact on amenity, which were cited in six cases. Wherever residents' concerns with noise and amenity were raised, the outcome was success for the licensee but with conditions imposed on the licence to address the residents' concerns. A community action group was unsuccessful in its objection, but this was a case that was not located in the inner city.

A key case that was successful from the licensee's perspective was an application by the licensee of a packaged liquor premises to review newly imposed conditions on the licence; namely, having hours of operation reduced from 7 am the following morning to 11 pm (*Kordister Pty Ltd v Director of Liquor Licensing* (Occupational and Business Regulation) [2010] VCAT 277). In its decision, VCAT acknowledged the need to minimise harm but balanced this with community expectations and the benefits of late-night trading. This decision, which was appealed, is discussed in greater detail in the next chapter.

Harm minimisation was referred to in this case and two others (that is, much less often than amenity and noise). It was never a persuasive argument at VCAT in the cases studied. The licensee was successful in two of the three cases, and in the third case in which the licensee was successful but with conditions, the conditions related to amenity and noise, not to harm minimisation. More specifically, the potential for harm to minors was cited in four objection cases and was directly responsible for the one case that was not found in favour of the licensee (*Danz Management Pty Ltd v Director of Liquor Licensing* (Occupational and Business Regulation) [2010] VCAT 536). In the other three cases that cited harm to minors, it was much more difficult to mount a persuasive argument and the cases were either successful for the licensee or the conditions that were imposed had no relationship to serving minors.

## Conclusions

Examination of recent case law in Australia has revealed the general ineffectiveness of public interest arguments, whether considering complaints against existing licensees or applications for new, or amended, liquor licences. The review tribunals appear to consider that an existing liquor licence is valuable private property, even if its value derives from its status as a licence from the state. The tribunals are extremely unlikely to actually extinguish a licence, and are even reluctant to suspend a licence for two days. This general finding means that liquor licensing in its current form is ineffective as a tool to alter the behaviour of licensees. A state licence is supposed to be granted on condition that the holder obeys certain rules, but this function of discipline and control has almost been overlooked in the day-to-day operation of the systems.

Except in Western Australia, the current liquor licensing system is heavily weighted towards the presumption that applications for a liquor licence will be successful. The system is sometimes willing to impose (mostly minor) restrictions in the interest of neighbours' amenity. But for an application for a liquor licence to be denied, the best chance of success is for multiple objectors, including police, local government and health departments, to make well-argued evidence-based submissions in an environment where the necessary evidence is hard to obtain; in these cases the burden of proof (lack of) public interest lies with the objectors. Only in Western Australia, where the burden of proof of public interest has been reversed, have new applications for liquor licences been refused with any frequency. To achieve the public interest objective of harm minimisation, other states and territories should consider adopting Western Australia's reversal of the burden of proof. Unless such a reversal is made, the liquor licensing system as it currently operates (on the basis of the case studies), despite purporting to act in the public interest to reduce harm, is largely ineffective.

## References

1. Nand S. *Decisions on objections to liquor licenses in Victoria: a research report produced for the Turning Point Alcohol and Drug Centre*. Melbourne: The University of Melbourne, School of Social and Political Sciences, 2012.
2. Mossenson D, Curlewis I, Patterson J, Weston A. The changing tide of liquor licensing in Western Australia. Lavan Legal, 2012. Accessed 17 September 2012 <[www.lavanlegal.com.au/index.php/publications/publicationdetail/the\\_changing\\_tide\\_of\\_liquor\\_licensing\\_in\\_western\\_australia](http://www.lavanlegal.com.au/index.php/publications/publicationdetail/the_changing_tide_of_liquor_licensing_in_western_australia)>.
3. Victorian Auditor-General. *Effectiveness of justice strategies in preventing and reducing alcohol-related harm*. Melbourne: Victorian Government, 2012. Accessed 12 February 2014 <[www.audit.vic.gov.au/reports\\_and\\_publications/latest\\_reports/2011-12/20120620-alcohol.aspx](http://www.audit.vic.gov.au/reports_and_publications/latest_reports/2011-12/20120620-alcohol.aspx)>.
4. Braun V, Clarke V. Using thematic analysis in psychology. *Qualitative Research in Psychology* 2006;3(2):77–101.
5. Trifonoff A, Andrew R, Steenson T, Nicholas R, Roche A. *Liquor licensing legislation in Australia: part 1: an overview*. Adelaide: Flinders University, National Centre for Education and Training on Addiction (NCETA), 2011.
6. National Competition Council. Welcome to the National Competition Policy website. Accessed 10 February 2014 <<http://ncc.ncc.gov.au/>>.
7. Government of Western Australia Department of Racing, Gaming and Liquor. *Public interest assessment, pursuant to section 38 of the Liquor Control Act 1988*. Perth: Department of Racing, Gaming and Liquor, 2010. Accessed 1 November 2012 <[www.rgl.wa.gov.au/ResourceFiles/Policies/PublicInterestAssessment.pdf](http://www.rgl.wa.gov.au/ResourceFiles/Policies/PublicInterestAssessment.pdf)>.
8. New South Wales Independent Liquor and Gaming Authority. Decisions of interest—reasons for decision on application for packaged liquor licence—The Friendly Grocer, Lake Cargelligo—6 June 2012. ILGA, 2012. Accessed 13 June 2013 <[www.ilga.nsw.gov.au/resource/reports/Lake%20Cargelligo%20060612.pdf](http://www.ilga.nsw.gov.au/resource/reports/Lake%20Cargelligo%20060612.pdf)>.

# Chapter 5

## Regulating to reduce alcohol-related harm: liquor licensing and the harm minimisation test

Sondra Davoren and Paula O'Brien

Liquor licensing legislation in Australia is the responsibility of state and territory governments and is developed independently in each jurisdiction, although common principles underpin the regulation of alcohol sale and supply across all jurisdictions. One such principle is a statutory obligation to reduce alcohol-related harm.

All states and territories in Australia, except Tasmania, now have minimisation of harm from alcohol or related concepts as an express object of their liquor licensing legislation (see Chapter 3). This is similar to objects in s. 4(2) of the United Kingdom's Licensing Act 2003, which aims to prevent crime and disorder and public nuisance, to promote public safety and to protect children from harm. Scotland's Licensing (Scotland) Act 2005 copies the United Kingdom's objects but includes 'protecting and improving public health' (s. 4(1)). Such objects provide important statements about the manner in which decisions should be made under relevant licensing Acts.

This chapter considers the development of the harm minimisation object, and the application of the harm minimisation test in liquor licensing decisions. The object of harm minimisation has recently been judicially considered in Victoria in the case of *Kordister Pty Ltd v Director of Liquor Licensing (Kordister)* (1, 2). This chapter examines this case and its implications for applying similar legislative objects in other Australian jurisdictions.

### Objects in liquor licensing legislation

Alcohol availability, in terms of the number of liquor licences and licensed premises, has increased consistently over the past 10 to 15 years in Australia (3:8). In this time, the profile of licensed premises has changed too—with more late-night trading venues, large packaged liquor outlets and greater density of liquor outlets. In the court decisions in *Kordister*, much was made of historical approaches, and political and community attitudes, to liquor licensing in Victoria over time. This context is outlined in the following discussion.

As discussed in Chapter 3, Australia's National Competition Policy (NCP) has been a major factor in the liberalisation of Australia's alcohol industry. In Victoria, deregulation of the liquor licensing framework was already underway by the time NCP reforms took effect. In 1985, the Nieuwenhuysen report (4) recommended significant liberalisation of the liquor licensing industry and the development of a night-time economy. The resulting *Liquor Control Act 1987* (Vic.) (the 1987 Act) (now repealed) was more pro-competition than the preceding legislation, as reflected in the object in s. 5(a) 'to promote economic and social growth in Victoria by encouraging the proper development of the liquor, hospitality and related industries'. The objects section of the 1987 Act also included the prevention and control of alcohol abuse and misuse (s. 5(d)), but this was afforded no greater weight than any of the other objects. The licence that was the subject of concern in *Kordister* was granted under the 1987 Act.



Following the implementation of the 1987 Act, there was a marked increase in the number of restaurant licences, and extended hours were granted to hotels, bars and nightclubs (5:16). However, as the number of liquor outlets increased and trading hours were relaxed, concerns about the level of underage drinking, violent and criminal behaviour arising from drunkenness, the level of drink-driving and adverse effects on the amenity of communities near licensed premises also increased (6:29).

A further review of the Victorian liquor licensing framework was undertaken in 1998 to continue the trajectory of the Nieuwenhuysen reforms and to make the Victorian liquor licensing legislation compliant with the NCP. The review culminated in new legislation, the *Liquor Control Reform Act 1998* (Vic.) (the Victorian Act), which lifted restrictions on restaurant licences and further relaxed trading hours, allowing for 24-hour trading. The review recommended that the principal object of the Victorian Act should be the minimisation of harm. The following objects (s. 4(1)) were enacted:

- a. to contribute to minimising harm arising from the misuse and abuse of alcohol, including by—
  - (i) providing adequate controls over the supply and consumption of liquor; and
  - (ii) ensuring as far as practicable that the supply of liquor contributes to, and does not detract from, the amenity of community life; and
- b. to facilitate the development of a diversity of licensed facilities reflecting community expectations; and
- c. to contribute to the responsible development of the liquor and licensed hospitality industries.

Since 2008, further amendments, such as the introduction of risk-based licensing in 2009, have targeted some of the adverse effects of the sudden growth in licensed premises—in particular, the increase in large nightclubs and bars with late-night trading licences, which are associated with increased risk of alcohol-related harm (7:25). Sections 4(1)(a)(iv) and 4(2), introduced in 2009, strengthened the harm minimisation objects of the Victorian Act more broadly.

At the time of writing, the objects clause in s. 4 reads:

1. a. to contribute to minimising harm arising from the misuse and abuse of alcohol, including by—
    - (i) providing adequate controls over the supply and consumption of liquor; and
    - (ii) ensuring as far as practicable that the supply of liquor contributes to, and does not detract from, the amenity of community life; and
    - (iii) restricting the supply of certain other alcoholic products; and
    - (iv) encouraging a culture of responsible consumption of alcohol and reducing risky drinking of alcohol and its impact on the community; and
  - b. to facilitate the development of a diversity of licensed facilities reflecting community expectations; and
  - c. to contribute to the responsible development of the liquor, licensed hospitality and live music industries; and
  - d. to regulate licensed premises that provide sexually explicit entertainment.
2. It is the intention of Parliament that every power, authority, discretion, jurisdiction and duty conferred or imposed by this Act must be exercised and performed with due regard to harm minimisation and the risks associated with the misuse and abuse of alcohol.

The harm minimisation objects in most state and territory licensing statutes are intended to be met by measures that include placing adequate controls on the sale and supply of alcohol; encouraging responsible attitudes and practices towards the sale and supply of alcohol; and regulating the amenity of licensed premises (8:45). However, the extent to which measures may contribute to a reduction of alcohol-related harm can be difficult to assess, particularly in relation to applications for new licences in areas where liquor has not been sold previously, or in growth areas (7:28). Assessing evidence in

support of applications (and objections), with a view to achieving the object of harm minimisation, presents a challenge for regulatory authorities. The court in *Kordister*, having acknowledged the changed emphasis of the objects in the Victorian legislation, went on to examine this challenge.

## Background to *Kordister*

The Exford Hotel in Melbourne's central business district (operated by *Kordister* Pty Ltd) ran a small bottle shop under a packaged liquor licence that permitted 24-hour trading. This licence was granted under the 1987 Act. In 2009, an application was made to the then Director of Liquor Licensing, under the new Victorian Act, to reduce the trading hours by requiring the hotel bottle shop to close at 11 pm. According to the police and liquor licensing inspector, the hotel had become a 'hot spot' for anti-social behaviour arising from the misuse and abuse of alcohol (6:para 2).

The hotel contested the application. A statutory advisory panel was appointed to conduct a public enquiry. The panel's detailed report to the director recommended the application be granted. The director accepted the recommendation and reduced the trading hours of the hotel bottle shop.

The hotel applied to the Victorian Civil and Administrative Tribunal (VCAT) for review of the director's decision. VCAT set aside the director's decision, having been persuaded that there was no direct cause-and-effect relationship between the operation of the hotel bottle shop and alcohol-related incidents in the area, and that ending late-night trading at the bottle shop would damage the profitability of the hotel and other liquor outlets in Victoria (2:para 4).

The director, with support from the Chief Commissioner of Victoria Police, appealed the VCAT decision to the Victorian Supreme Court. The director's case was that VCAT had failed to perform its statutory role in liquor licensing decisions, which was to exercise its power in a manner that was consistent with the object of harm minimisation—specifically, VCAT had misconstrued the task at hand, which was to consider whether ending late-night trading at the bottle shop would have *contributed* to a reduction of harm, rather than the elimination of harm (6:para 94).

The Supreme Court allowed the appeal, finding that VCAT had misunderstood the concept of harm minimisation, had failed to realise the primacy of the object in the Victorian Act, and, as such, had failed to properly consider or evaluate whether ending late-night trading at the bottle shop would contribute to the minimisation of harm arising from the misuse and abuse of alcohol (6). The Supreme Court ordered that the application be reconsidered by VCAT.

The hotel appealed to the Victorian Court of Appeal, which upheld the approach taken by the Supreme Court; that is, when exercising functions under the Victorian Act, decision-makers must primarily consider how to achieve the goal of minimising harm from alcohol misuse and abuse. The Court of Appeal found, as the Supreme Court had found, that VCAT had misunderstood its statutory function and had inappropriately narrowed its consideration of the effect on harm minimisation that would result from reducing the trading hours of the hotel.

However, recognising that three-and-a-half years had elapsed since the application to vary the hotel's hours was first brought, the likelihood that information supporting the original application was dated and no longer relevant (1:para 229), and that the contextual background to the matter was now a sequence of 'erroneous rulings and uncertain findings' which could be unfair to the hotel (1:para 230), the Court of Appeal granted the hotel a permanent stay in proceedings, allowing it to continue 24-hour trading. The Court of Appeal signalled that a fresh application to vary the hotel's trading hours may be brought by the Chief Commissioner of Police or a licensing inspector (1:para 231).

## The primacy of harm minimisation

In the course of its decision, the Court of Appeal confirmed that the Victorian Parliament intended that harm minimisation should be the primary object of the Victorian Act (1:paras 19, 188). As noted above, the harm minimisation object in s. 4(1)(a) is augmented by s. 4(2), making harm minimisation the primary purpose. Where harm minimisation is not just one statutory purpose but is *the primary purpose*, minimising harm from alcohol becomes the ‘fundamental principle’ on which the liquor licensing legislation rests—it is the ‘primary consideration’ in making decisions under the legislation and ‘a value which informs and guides the whole Act’ (1:paras 19, 188).

Harm minimisation is also stated as the primary object of liquor licensing legislation in Queensland (ss. 3(a) and 3A(4) of the *Liquor Act 1992*). In Western Australia, in the past, harm minimisation was one of two primary objects of the liquor licensing statute; the other primary object was ‘to regulate the sale, supply and consumption of liquor’ (ss. 5(1)(a) and (b) of the *Liquor Licensing Act 1988*). The Supreme Court of Western Australia had found that there was ‘no tension’ between these two primary objects (9:para 18), but in 2006 the Western Australian Parliament amended the legislation to add a third primary object ‘to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the state’ (s. 5(1)(c) of the *Liquor Control Act 1988*). Arguably, there is now some tension between these three objects. In the Australian Capital Territory and the Northern Territory, harm minimisation is not expressly given primacy over other objects but there is a basis in the text of the legislation for making such an *implication* (ss. 9(1) and 10 of the *Liquor Act 2010* (ACT); ss. 3(1) and (2) of the *Liquor Act 2013* (NT)). In New South Wales and South Australia, harm minimisation is mentioned as one of several statutory objects of equal standing (s. 3(1) of the *Liquor Act 2007* (NSW); s. 3(1) of the *Liquor Licensing Act 1997* (SA)).

Whether harm minimisation is the primary object, one of several primary objects or one of several equally ranked objects, its presence in liquor licensing legislation has implications for how decisions are made about licences. These implications are explored in the next section.

## Using the harm minimisation object in licensing decisions

The case of *Kordister*, along with some statements from courts in other cases, provides valuable guidance about how to use the concept of harm minimisation in decision-making about granting or refusing a new licence or varying an existing licence (such as to increase or decrease trading hours). But still the concept is not easy to apply; the courts themselves have noted ‘the potential complexity of the concept of harm minimisation’ (1:para 20).

### A balancing exercise

Where harm minimisation is an object of liquor licensing legislation, a decision-maker faced with a decision about a licence application or variation must determine *the contribution that a particular liquor licensing decision would make to minimising harm from alcohol*. This determination must then be weighed and balanced against other considerations that the statute requires be given attention (1:paras 15, 11:para 19). Besides harm minimisation, other objects listed in the statute, such as development of a diversity of licensed facilities, need to be taken into account. It is through this exercise of weighing and balancing various considerations that the licensing decision must ultimately be reached. The role of the decision-maker is to ‘strike an appropriate balance’ between the need to minimise harm arising from the misuse and abuse of alcohol and the other objects (1:para 31). Even where harm minimisation has been marked out as ‘the primary regulatory consideration’ (6:para 19), it does not mean that the other objects are irrelevant (1:paras 21, 188).

In this weighing exercise, the Court of Appeal in *Kordister* suggested that the presence of harm minimisation as a relevant factor means that a 'conservative', 'precautionary approach' is correct, such that 'if an appreciable risk of harm is identified, harm minimisation favours avoiding such potential risk unless it can be positively justified' (1:para 34). This erring on the side of caution must be especially called for where harm minimisation has primacy under the statute. However, the court was also insistent that harm minimisation is not about prohibition and that it does not mean that every application for a liquor licence should be refused or every application for a variation should be granted (1:paras 13–15).

Therefore, having harm minimisation as *an object* at least means that proper attention must be given by a decision-maker to the need to limit the harms that flow from alcohol. But where harm minimisation is *the primary object* of the statute, there is an argument that more weight or emphasis needs to be placed on the contribution that the licensing decision makes to minimising harm than on any other factor. In *Planet Platinum Limited v Hodgkin*, the Victorian Supreme Court found that it was proper for a decision-maker to place 'particular emphasis' on the importance of harm minimisation where it is a primary object (10:para 88).

## Determining the contribution of a licensing decision to minimising harm

How should a decision-maker determine the contribution a particular licensing decision will make to minimising harm from alcohol? The courts have not been entirely clear about how to answer this question, but it seems from the *Kordister* case that the decision-maker must make a 'predictive' (1:para 33; 11:para 27) assessment about the risk of alcohol-related harm that the licence poses. Where an application for a reduction in trading hours is being decided, the decision-maker should consider the *current* risk of alcohol-related harm in the area where the licensed venue is operating and the difference that would be made to that risk if the trading hours of the venue were reduced. Where a new licence is sought, the consideration concerns the *current* risk of alcohol-related harm in the area and the difference that would be made to that risk if a new licence was granted.

In this inquiry, the risks need to be understood in terms of the likelihood of harm occurring and the nature or gravity of the harm (1:para 57). The court seems to talk about a qualitative assessment of risk. Justice Ipp in *Lily Creek* spoke of determining 'the likelihood of harm or ill-health occurring by reference to a degree of probability' (9:para 27). Justice Bell in the Supreme Court in *Kordister* put the 'harm minimisation' question that the decision-maker must ask him or herself in this way (1:para 164):

In this case, what the tribunal was required to do and did not do was to make an evaluative judgment about the contribution which ending late-night trading at the bottle shop would make to minimising harm arising from the misuse and abuse of alcohol. That required the tribunal to consider the degree and nature of the harm that was occurring or likely, from whatever cause, and how, if at all, ending that trading would contribute to minimising that harm, even if the bottle shop was not responsible for it.

It is the assessed change in the risk of harm from the licensing decision that must be then weighed up against other considerations in deciding whether to grant or vary a licence. This might be a 'mere possibility' of harm (9:para 29). As Justice Bell said, 'A low risk of severe harm may warrant significant consideration in the evaluative balance, depending on the circumstances. A low risk of slight harm might be treated differently' (6:para 124). In 2013, the Western Australian Supreme Court stated, in the course of upholding a decision to refuse a packaged liquor licence to Liquorland (11:para 56), that:

where there is already a very high and serious level of alcohol related harm in the community, it may be that the Court would find a relatively small risk of increase in that level of harm to be unacceptable. In other words, it is not the 'risk' of harm in some abstract sense which is relevant, but rather the risk having regard to the proved circumstances of the particular area in relation to which the application is made.

Following this line of reasoning would also suggest that where there is already a high level of risk, a measure which would produce only a small reduction in that risk may nonetheless be seen as making a real contribution to harm minimisation. This evaluation of the relative risks and weighing of the risks of harm against other factors requires the decision-maker to have a working view about the level of risk from alcohol that the community is prepared to bear (12). Without this critical reference point, a decision-maker is likely to either over-utilise or (more commonly, as experience might suggest) under-utilise the harm minimisation principle in liquor licensing. Quite properly, the courts say nothing about what this level of risk should be and it remains a matter within the discretion of the primary decision-makers at the departmental or agency level. This is a complicated and challenging issue for government policy and it is not evident that federal, state or territory governments have fully and publicly articulated their views of the levels of alcohol-related harm that are tolerable in the community.

## The risks of alcohol-related harm

The court in *Kordister* made clear that assessing the risk of harm from a particular licence is not solely about the conduct of the licensee. Proving a causal connection between the venue's late-night trading and specific incidents of harm—for example, underage people, supplied with alcohol by the licensee, who become involved in street fights—would provide a strong basis for predicting that a reduction in the venue's hours would contribute to minimising the risk of harm. Consistent with this approach, the licensee in *Kordister* argued that, in the absence of evidence of the venue being directly responsible for some harm in the past, the decision-maker could not make the prospective assessment that shortening the venue's trading hours would contribute to reducing harm.

The court did not agree. It said that the risk of harm from a particular liquor licence depends not just on the individual conduct of the licensee but on a range of 'social and cultural' (1:para 197) factors connected with the licence, which include but are not limited to:

- *the character of the licensed venue*, such as whether it sells packaged alcohol for off-premises consumption; whether it is a cafe or restaurant; the patron capacity of the venue; the trading hours of the venue; any conditions on the venue's liquor licence (1:para 24)
- *the geographic location of the venue*, such as its proximity to other licensed venues (1, 13) or its position on a pedestrian thoroughfare (1) or on a busy road (11)
- *the occurrence of alcohol-related violence and incidents close to the venue* (14)
- *the vulnerability to alcohol-related harm of persons in the vicinity of the venue*, such as where the proposed venue is close to an Indigenous campsite (11) or to community services for homeless people, people with drug and alcohol problems, or people with mental health problems (11).

It is the combination and intersection of these various factors that determine the risk of alcohol-related harm from a *particular* licence. This approach recognises that the risk of alcohol misuse from the issuance of a licence is not the same in every instance and that the risk from a licence depends at least on the immediate context in which the licence will operate and possibly on broader social factors. The court recognised that the risk may also change over time because of shifts in the surroundings in which the licence operates (1:para 33). The same could be said about changes in patterns of alcohol consumption. With this approach, the conduct of the licensee remains relevant but will probably not be determinative. Even a perfectly well-operated 24-hour bottle shop may be a source of risk that could be diminished if the bottle shop's hours were limited.

This is a much more textured and sophisticated understanding of alcohol and its harms than was seen in the VCAT decision in *Kordister*. In that decision, there was, paradoxically, both an insistence on direct evidence of the seller causing harm *and* a general unwillingness to see alcohol-related harm as the problem of the seller. VCAT saw that 'Balancing the pleasures of drinking with the importance of minimising the harm that may flow to a drinker is also a matter of personal decision and individual

responsibility. It is a matter more fairly to be placed on the drinker than the seller of drink' (1:para 60). The Court of Appeal expressly rejected this focus on individual fault and reiterated that harm minimisation 'seeks to address the issue of alcohol misuse from the point of view of net community impacts' (1:para 62). The approach of the court is also consistent with the shift to risk-based licensing fees in some jurisdictions, including Victoria, Queensland and the Australian Capital Territory (8:xvi).

## Evidence relevant to the risks of alcohol-related harm

It follows from the courts' view that the risk of alcohol-related harm from a licence is the result of a combination of factors that go beyond the direct conduct of the licensee and that a broad range of evidence is relevant to this determination. The judges in *Kordister* set out three categories of evidence that could be considered. These include evidence that might have been dismissed as irrelevant under a strict 'fault-based' approach to licensing, but that takes on a new significance in a risk-based approach to licensing.

One category of evidence is what the court called *general evidence*. In *Kordister*, there was general evidence led by the Director of Liquor Licensing about the connection between licensed premises and alcohol-related harm. There was also evidence about the rates of persons drinking at risky levels based on the Victorian Population Health Survey, as well as the rate of alcohol-related presentations and admissions to hospital emergency departments (1:para 130). This was led to support the argument that reducing the operating hours of the Exford bottle shop would contribute to minimising harm from alcohol.

The court in *Kordister* confirmed that general evidence is relevant to determining risk and it is wrong to discount the importance of this evidence. This opens the way for population-level studies about alcohol and harm to be included in evidence, along with expert testimony from relevant perspectives, including epidemiology or sociology. But it is important to note that all the judges in *Kordister* seem concerned that general evidence 'not prove too much' and not be the basis for rejecting all applications for new licences or accepting all applications to vary licences (1:para 191). It means that general evidence is unlikely, on its own, to be a basis for a decision adverse to a licensee. General evidence will have the greatest significance when it can be linked with the next category of evidence—'locality evidence' (1:para 191).

The second category of evidence called *locality evidence* is concerned with the 'particular local, social, demographic or geographical circumstances of the relevant premises' (1:para 191). In *Kordister*, locality evidence was led about the nature of the area in which the bottle shop was located, including the pedestrian traffic, the surrounding late-night drinking venues and the opportunities for street drinking. There was also evidence about the anti-social behaviour that occurred in the Melbourne central business district (1:para 157).

The court found that such evidence was relevant to the question about whether reducing the bottle shop's hours would contribute to harm minimisation. The court made clear that there must be a connection between the licence and the locality evidence, but this connection does not need to be causal (1:para 192). One would assume that a geographic connection would be sufficient in most instances. In *Kordister*, it was relevant to know what anti-social behaviour was occurring in the vicinity of the licensed venue without inquiring whether the bottle shop contributed to this behaviour through the sale of liquor. The court (1:para 194) explained that this evidence is relevant because:

licensed premises are not to be considered in isolation from the social and cultural environment that they inhabit. Licensed premises are not to be treated, for the purposes of regulation, as isolated from each other or as entities around which strict boundaries can be drawn separated from their respective social milieu.

The court indicated that locality evidence alone could show that 'the object of harm minimisation would not be well-served by permitting 24-hour trading of packaged liquor' (1:para 26).

The third category is *specific incident* evidence. This is evidence about either misconduct by the licensee (such as serving an intoxicated person) or occurrences of harmful behaviour (such as fighting outside the licensed venue). Where there is evidence about misconduct by the licensee, it must be shown to have some connection to harm. Similarly, where incidents involving harm are raised to prove that the licensee was responsible, a causal connection must be established between the harm and the licensee. Otherwise, at most, those incidents would constitute locality evidence. Evidence of specific incidents showing that the licensee's conduct has caused harm will have special weight in decision-making. But the court was certain that 'in some circumstances, the locality evidence may have such probative value that there is no need for reliance upon specific incidents' (1:para 195). Where there is both locality and specific incident evidence, the decision-maker will need to determine the weight to give to each in the circumstances of the particular case (1:para 195).

## Conclusions

The significant changes in approaches to the control and supply of alcohol in Australian jurisdictions are clearly reflected in the shifting purposes of liquor legislation and the expectation that liquor licensing bodies will exercise their powers in a way that contributes to a reduction in alcohol-related harm.

The court in *Kordister* articulated the deliberative process which should be undertaken for licensing risk assessments (as distinct from the process for taking disciplinary action against a licensee). As the case related to Victorian liquor licensing legislation, only Victoria is legally bound by the approach to harm minimisation taken in *Kordister*. The case is nonetheless relevant and has persuasive value in all other Australian jurisdictions that have harm minimisation or related objects in their liquor licensing legislation.

The case should be looked at by licensing decision-makers and those opposing a current or prospective liquor licence (whether they be local government, police or communities and their legal advisors). In particular, the categories of evidence declared in *Kordister* provide clarification about the matters that should be given attention in using the harm minimisation object. Although the character and conduct of the licensee should be considered, the focus of the harm minimisation object is broader than individual licensees, and so 'general evidence' (including population level evidence about alcohol and its harms) in combination with 'locality evidence' (about the particular circumstances in which the licence does, or would, operate) are highly significant.

Although each state and territory is subject to a different licensing regime, the nuanced and sophisticated approach taken in this case is enlightening for anyone attempting to apply the complex notion of harm minimisation in regulating the supply and sale of alcohol.

## References

1. *Kordister Pty Ltd v Director of Liquor Licensing & Anor* [2012] VSCA 325 (19 December 2012). Australasian Legal Information Institute (AustLII). Accessed 20 June 2013 <[www.austlii.edu.au/au/cases/vic/VSCA/2012/325.html](http://www.austlii.edu.au/au/cases/vic/VSCA/2012/325.html)>.
2. *Kordister Pty Ltd v Director of Liquor Licensing* (Occupational and Business Regulation) [2010] VCAT 277 (9 March 2010). AustLII. Accessed 20 June 2013 <[www.austlii.edu.au/au/cases/vic/VCAT/2010/277.html](http://www.austlii.edu.au/au/cases/vic/VCAT/2010/277.html)>.
3. Trifonoff A, Andrew R, Steenson T, Nicholas R, Roche A. *Liquor licensing legislation in Australia: part 2: a jurisdictional breakdown*. Adelaide: Flinders University, National Centre for Education and Training on Addiction (NCETA), 2011.
4. Nieuwenhuysen J. *Review of the Liquor Control Act 1968: main themes of the report*. Melbourne: Government Printer, 1986.

5. Victorian Government. *Liquor Control Act 1987 review*. Melbourne, 1998. Accessed 9 April 2013 <<http://ncp.ncc.gov.au/docs/Victorian%20review%20of%20the%20Liquor%20Control%20Act%201987,%20April%201998.pdf>>.
6. *Director of Liquor Licensing v Kordister Pty Ltd & Anor* [2011] VSC 207 (18 May 2011). AustLII. Accessed 20 June 2013 <[www.austlii.edu.au/au/cases/vic/VSC/2011/207.html](http://www.austlii.edu.au/au/cases/vic/VSC/2011/207.html)>.
7. Victorian Auditor-General. *Effectiveness of justice strategies in preventing and reducing alcohol-related harm*. Melbourne: Victorian Government, 2012. Accessed 12 February 2014 <[www.audit.vic.gov.au/reports\\_and\\_publications/latest\\_reports/2011-12/20120620-alcohol.aspx](http://www.audit.vic.gov.au/reports_and_publications/latest_reports/2011-12/20120620-alcohol.aspx)>.
8. Trifonoff A, Andrew R, Steenson T, Nicholas R, Roche A. *Liquor licensing legislation in Australia: part 1: an overview*. Adelaide: Flinders University, National Centre for Education and Training on Addiction (NCETA), 2011.
9. *Executive Director of Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258 (12 September 2000). AustLII. Accessed 20 June 2013 <[www.austlii.edu.au/au/cases/wa/WASCA/2000/258.html](http://www.austlii.edu.au/au/cases/wa/WASCA/2000/258.html)>.
10. *Planet Platinum Limited & Ors v Hodgkin & Anor* [2011] VSC 330 (21 July 2011). AustLII. Accessed 20 June 2013 <[www.austlii.edu.au/au/cases/vic/VSC/2011/330.html](http://www.austlii.edu.au/au/cases/vic/VSC/2011/330.html)>.
11. *Liquorland (Australia) Pty Ltd v Executive Director of Public Health* [2013] WASC 51 (27 February 2013). AustLII. Accessed 20 June 2013 <[www.austlii.edu.au/au/cases/wa/WASC/2013/51.html](http://www.austlii.edu.au/au/cases/wa/WASC/2013/51.html)>.
12. Room R, Rehm J. Clear criteria based on absolute risk: reforming the basis of guidelines on low-risk drinking. *Drug and Alcohol Review* 2012;31(2):135–40.
13. *Sodhi v Moonee Valley CC & Anor* [2012] VCAT 564 (3 May 2012). AustLII. Accessed 20 June 2013 <[www.austlii.edu.au/au/cases/vic/VCAT/2012/564.html](http://www.austlii.edu.au/au/cases/vic/VCAT/2012/564.html)>.
14. *Nardi v Director of Liquor Licensing (Occupational & Business Regulation)* [2005] VCAT 323 (25 February 2005). AustLII. Accessed 20 June 2013 <[www.austlii.edu.au/au/cases/vic/VCAT/2005/323.html](http://www.austlii.edu.au/au/cases/vic/VCAT/2005/323.html)>.



# Chapter 6

## Strengthening community input in liquor outlet approvals

Tony Brown

Confusion and tension exist in Australian states and territories concerning the operation of two distinct legal processes relating to liquor licensing—the planning approval process and the liquor licensing system. The first relates to a planning process for land use and considers a wide range of issues—for instance, zoning, the durability and safety of the structure, and the availability of off-street parking—that are not specific to places that sell alcohol. In contrast, the second relates specifically to the licensing of premises for the retail sale and/or consumption of alcohol. This requires that a licence be obtained from the liquor licensing authority of the state or territory in which the sale takes place. Chapters 2, 3 and 4 of this book have already discussed how this has resulted in a high degree of diversity between jurisdictions.

Increasingly, local communities are becoming aware of, and mobilising against, the imposition and proliferation of large bulk discount liquor outlets and extended late trading of pubs and clubs. They accept the well-documented connection between harm and outlet density, cheap alcohol, increased availability and bulk supply, and extended closing times (1). However, communities seeking engagement with the local government planning and liquor licensing (including disturbance complaint) systems often lack an understanding of the complexity, power imbalances and associated costs of the two distinct regulatory processes. The confusion surrounding these two processes contributes to a failure to minimise or prevent alcohol-related harm or to respect the aspirations and concerns of local communities and their frustrated attempts to be heard.

In this chapter I consider how communities are negotiating this complexity in New South Wales. Although there are differences in laws and procedures elsewhere in Australia (see Chapter 2), the issues that arise are consistent with those encountered in other jurisdictions. Therefore, the lessons can be applied to other jurisdictions in Australia. After discussing the planning and licensing systems in New South Wales, I use case law examples from both systems to demonstrate the inherent inconsistency and shortcomings of the current system. I also examine the role that community objectors play. I conclude by making recommendations to address these shortcomings.

### Planning approval

When a liquor licence application is made, in the first instance, a local council or other authorised statutory body under the *Environmental Planning and Assessment Act 1979* (NSW) conducts an assessment and determination for a development application (DA). Each local council determines the criteria to trigger a requirement to lodge a DA for public, private and commercial developments, including new constructions, alterations and renovations. The DA also usually stipulates the usage of the premises and any attaching conditions that can specifically relate to licensed premises. This represents a land-use planning decision that is shaped by a DA's conformity to a hierarchy of New South Wales planning instruments, including Council Development Plans, Local Environment Plans,

and more centralist regional and state plans.<sup>1</sup> Section 79C of the Act identifies those matters that must be considered when determining a DA. They involve the likely impacts of the development, including environmental impacts on both the natural and built environments, social and economic impacts in the locality, and the public interest.

Pursuant to s. 96 of the Act, an owner may, after approval, subsequently apply to a consent authority for a 'minor' modification of the planning consent. There is no guarantee that such applications may be considered in detail by elected councillors. What constitutes 'minor' changes in respect to liquor supply and service-related development conditions can be at the discretion of individual council officers.

The New South Wales Land and Environment Court (LEC) considers appeals from proponents of premises intended to be licensed to sell liquor that have had their DA rejected, or approved with planning conditions that they consider too burdensome. Proponents can also appeal to the court on the basis of a 'deemed refusal' where the consent authority fails to approve the application within a set period of time, usually 40 days. This short time limit is challenging for councils, which must properly consider and negotiate detailed applications and participate in the process.

LEC hearings are an adversarial process with the opportunity for both lay and scientific evidence to be tested under cross-examination. However, given the difficult financial circumstances of many New South Wales councils, the substantial costs associated with defending a court challenge place additional pressure on councils to approve controversial, well-funded, liquor-related development applications, notwithstanding legitimate objections from residents and health and police authorities. Similarly, most residents and community groups lack sufficient funding and resources to mount legal challenges against planning decisions involving liquor outlets.

However, gaining DA approval does not always guarantee the approval of the liquor licence, which must be applied for using the liquor licensing process.

## Liquor licensing

The New South Wales Independent Liquor and Gaming Authority (ILGA, or the Authority) has power under the *Liquor Act 2007* (NSW) (the Liquor Act) to consider and approve liquor licences, possibly with conditions, for different types of establishments. In contrast to the LEC, the Authority is not subjected to the courts' adversarial system involving cross-examination, nor do hearings involve the same degree of interrogation and scrutiny of the opponent's evidence. The Authority is not compelled to produce written decisions. The Authority has only limited resources, which results in it being unable to ensure that all controversial licence applications involving police, health or resident objections are subject to public hearings and that the decisions are published.

In reaching its decision, the Authority must take into account the objects of the Liquor Act, which include in s. 3(1)(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'.

As with the LEC, ILGA also has the power to assess the social impacts of liquor-related applications and has the overarching legal principle of ensuring decisions are in the public interest. The Authority provides a specific guideline (3) on its process for considering the social impact of a licence on community wellbeing. Other factors taken into consideration include not only the more traditional items of location, type of liquor licence and trading hours, but also public health research relating to the link between liquor outlet density and adverse social outcomes. However, as with LEC cases, the community is at a considerable disadvantage compared to the liquor industry because it lacks the financial resources and familiarity with the complexity and nuances of the licensing system to adequately respond to the opportunity provided by this process.

---

<sup>1</sup> New South Wales planning laws are part way through an overhaul (2) intended to streamline the development approval process. Substantial community criticism has arisen about what is alleged to be proposed significant curtailment of genuine and ongoing community consultation and input, with even less opportunity for objectors to access appeal rights.

In a number of licensing matters concerning both planning processes and undue disturbance complaints lodged by police and local residents, the liquor industry has demonstrated a propensity to seek New South Wales Supreme Court relief.

## Case studies

### Case 1: Nowra (LEC)

A range of community interests, including residents, the local Aboriginal community, police, health officials and community officials, opposed the establishment of a Dan Murphy's outlet in Nowra, New South Wales. The Shoalhaven Council rejected the DA application on the basis of the unacceptable social impact, particularly within the nearby socially disadvantaged community. This rejection led to an appeal to the LEC. In *Martin Morris & Jones Pty Ltd v Shoalhaven City Council* [2012] NSWLEC 1280, the LEC found for Woolworths, the proprietors of Dan Murphy's.

The core considerations for the court were:

- whether the approval of the application would probably 'exacerbate and increase' existing substantial levels of recognised alcohol-related harms, and, if so
- whether the adverse social impact could be mitigated.

The Nowra case explored contributions to alcohol-related harms, including the impact of the harm on the 'locality'; measurements of 'harm' and the adoption of the 'precautionary principle'<sup>2</sup>; outlet density; price; availability; promotional material; and proximity of other liquor outlets. Although there was agreement between the parties that the research literature provided 'an adequate basis to inform a decision', there was no agreement on how the research should be applied. Evidence provided by local police demonstrated that the Nowra area had one of the highest rates of domestic violence in New South Wales. Police suggested that 100 per cent of local family problems and breakdowns and 75 per cent of domestic violence were related to alcohol.

Commissioner Pearson of the LEC found an increase in the number of liquor outlets was likely to increase alcohol consumption at risky levels and increase associated harm in the locality. However, the Commissioner also determined that the adverse social impact could be mitigated by subjecting the development to the following planning conditions:

- closing the existing BWS store
- preventing the sale of cask wine of more than two litres
- implementing management procedures and policies, including responsible service of alcohol (an existing legal obligation) and closed circuit television (CCTV) monitoring
- prohibiting promotional letterbox drops in the nearby vicinity.

Woolworths lost its argument to be permitted to include Dan Murphy's motto, 'Lowest liquor price guarantee', on its local promotional material and signage. In the Nowra case, despite a broad range of community, police and health evidence, which had resulted in the DA being rejected, the ruling was overturned on appeal to the LEC. However, planning conditions intended to mitigate the adverse social impact were imposed.

---

<sup>2</sup> The precautionary principle or precautionary approach states that if an action or policy has a suspected risk of causing harm to the public or to the environment, in the absence of scientific consensus that the action or policy is harmful, the burden of proof of whether it is harmful falls on those taking an act.

Although one could debate the relative sustainable effectiveness and utility of the above conditions to mitigate likely additional harms, the decision leaves an unintended impression that the existing levels of harms in Nowra were somehow acceptable and undeserving of immediate attention.

The court's reliance on 'mitigation' has significant policy implications. It sits uncomfortably with the core principles of harm minimisation, which emphasise effective preventive measures and the precautionary principle.<sup>3</sup>

## Case 2: Campbelltown (LEC)

In April 2013 the proponent for a retail liquor outlet appealed against the deemed refusal of an application by the Campbelltown City Council because of unacceptable social impact and high risks of alcohol-related harms (*Cardno Pty Ltd v Campbelltown City Council* [2013] NSWLEC 1056 (4)).

In the LEC appeal case, the applicant, in response to the concerns of the council and the police, proposed mitigation measures, including (4:12):

- Plan of management;
- CCTV monitoring;
- Window next to the sales counter for staff to observe the carpark, in order to assist in identifying secondary sales;
- Reducing the signage by deleting a proposed sign on the southern façade which could be seen from the skate park;
- Existing regular police patrols in the area;
- Complete the planting of an existing hedge to 1.6m high, along the southern side of the carpark, which will provide a substantial physical barrier, coupled with the existing fence on the median strip of Campbelltown Road, to discourage a direct path between the skate park and the proposal.

However, Commissioner O'Neill found against the application and dismissed the appeal, noting (4:para 45):

I am not satisfied that the proposed mitigative measures are capable of adequately curing the likely adverse social impacts of the proposal to an appropriate extent. The mitigative measures partly rely on police patrols of the area and the evidence of the Police is that they cannot guarantee that they will always be available and able to provide regular patrols of the area.

In the Campbelltown case, the LEC ruled that mitigation measures proposed by the applicant on appeal were not capable of achieving a reduction of the likely adverse social impacts of the proposal, and the appeal was dismissed. This is contrary to the decision made in case one, where the approval depended heavily upon the 'mitigation measures' proposed by the Commissioner.

## Case 3: Dan Murphy's Byron Bay (ILGA)

The DA for a Dan Murphy's outlet was approved by Byron Shire Council and the subsequent licence application was not opposed by the New South Wales Office of Liquor, Gaming & Racing (OLGR), whose officers initially processed the application and made a recommendation to ILGA. However, the local community was unhappy with the new liquor licence application and mounted a significant community campaign against the new liquor licence. This included a significant number of community-based written objections and a reported petition of 2000 against the Dan Murphy's outlet. ILGA then took the apparently unprecedented step of attending a community briefing (5) organised by OLGR in Byron Bay. The Authority's members heard from both Woolworths officials and a number of local community representatives opposed to the application.

---

<sup>3</sup> .See *Kordister* discussion in Chapter 5.

The Authority rejected the new liquor licence application (6). The decision identified disturbingly high indicators of the rate of alcohol harm and related crime for the Byron Bay location compared with the state average. It found that, in particular, an additional large packaged liquor outlet (Dan Murphy’s—estimated to be double the combined size of all existing packaged outlets in Byron Bay) would:

- make a significant contribution to under-age drinking
- facilitate drinking in alcohol-free zones and other public places
- contribute to preloading or “pre fuelling”—the practice of adults, particularly young adults, consuming packaged liquor before heading into town to attend licensed venues of an evening, including the hotels, bars, licensed restaurants and nightclubs that have on-premises licences’. (6:para 31)

Importantly, the Authority noted that local police had attempted to address supply side issues by consistently and strongly opposing applications for licensed trading after midnight.

It is likely that the Authority was also mindful of the extent and strength of local community opposition to the proposed Dan Murphy’s outlet. The Authority’s Chairperson, Mr Chris Sidoti, acknowledged that more New South Wales communities needed to make the Authority aware of the fact of, and the reasons for, their opposition (7).

The Byron Bay case, heard by ILGA, resulted in rejection of the application for a new packaged liquor outlet licence. The approval of the DA by the council meant that the LEC was not involved. Arguably, had the LEC assessed the social impact of the liquor licence application, on the basis of the reasoning contained in the Nowra case the above liquor licence would have been approved subject to possible conditions in mitigation of the predictable harms.

#### **Case 4: Surry Hills: *Wild Rover and Nomad***

Two cases in Surry Hills demonstrate the impact of submissions by police and the local government in influencing the decisions of ILGA in liquor licensing applications (8, 9).

In granting the Wild Rover hotel (general bar) licence, ILGA noted the opposition from the New South Wales Department of Health and found the number of local resident complaints credible and reasonable, as reinforced by Bureau of Crime Statistics and Research crime data (11). However, it approved the application, noting its support by the Council of the City of Sydney and no objection by the NSW Police Force.

The council planning conditions included CCTV, a 12-month trial of midnight closing and a plan of management, including noise and glass management. None of these conditions addressed the broader precinct-wide problem of liquor outlet density, the general level of alcohol-related incidents and excessive intoxication.

One week after the Wild Rover determination, the Nomad restaurant, located in close proximity to the Wild Rover, had its application for a Primary Supply of Alcohol Authorisation (which allows the consumption of alcohol without the prerequisite of an accompanying meal) refused by ILGA. In opposing the application, the NSW Police Force this time produced substantial evidence of research relating to the link between outlet density and assaults, and crime statistics emphasising that the location was an alcohol-related crime hotspot, as well as information relating to the impact of nearby licensed premises (9). ILGA declared (9:12):

In making this decision the Authority has considered all of the statutory objects and considerations prescribed by section 3 of the [Liquor] Act, but has given weight to subsection 3(2)(a)—the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour)—and subsection 3(2)(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.

A distinguishing feature of this case was the turnaround in the NSW Police Force's interpretation of the 'negative community impact' in opposing the Nomad Primary Supply of Alcohol application. The Nomad case is arguably one of ILGA's more defining decisions exploring the imprecise and subjective 'balancing act' between competing objectives of the Liquor Act, where it found for the benefit of the community. The later Mojo Bar (Central Sydney) decision of 31 July 2013 provides an important insight into the interaction between the council DA approval process and the liquor licensing regime in respect of similar assessment of social impact (10).

## Discussion

The above cases demonstrate, first, the apparent disparity both within the LEC and ILGA and between the LEC and ILGA decisions relating to the critical evaluation and determination of adverse social impact of liquor-related cases and the associated impacts on communities. Second, the analysis reveals the relative insignificance of community submissions compared to the weight of police submissions (see also Chapter 4).

Any government action to address these disparities faces several impediments. First, it appears unlikely that the government would allow itself to be perceived to be creating a barrier to the economic fortunes of the powerful liquor industry. Second, the proposed overhaul of New South Wales planning laws appears to reduce the level of community input after the initial strategic planning stage, and prioritises growth and economic development. So far it does not provide any confidence that public safety and health will be afforded primacy over the commercial interests of the liquor industry.

Finally, any ILGA activism (for example, intervening on its own initiative in 'black spots' such as central Sydney, Kings Cross and Byron Bay, which have graphic and appalling (but preventable) ongoing levels of alcohol-related violence and related harms) in the interests of public safety and health is restrained by the fact that part-time Authority members, unlike the court, have limited tenure and a very cautious approach to the risk of having their decisions challenged by the liquor industry in the Supreme Court. ILGA's ability to act is also hampered by the practical inability of the police to appeal against another branch of government (liquor administration), and by the lack of coordination and resources for communities in preparing challenges.

A high level of grassroots community activism was common to both a 2008 Liquor Administration Board decision to impose modest reductions in late trading hours in the Newcastle central business district (as discussed in Chapter 14) and Byron Bay's successful mobilisation against a large problematic Dan Murphy's liquor outlet (as discussed above). The ILGA chairperson acknowledged this in respect of the Byron Bay case and sought other communities to better inform the Authority of their aspirations, needs and expectations with respect to the likely negative social impact of proposed liquor licences.

However, the expectation that residents must shoulder the main evidentiary burden of proof when it comes to undue disturbance complaints is both unreasonable and extremely unsafe. Besides the requirement to mobilise a community in the distinct absence of any genuine and impartial support by government—in contrast to that afforded the liquor industry—an impediment is the high and demanding level of evidence required to establish 'undue disturbance' and 'intoxication'. Residents have previously been advised by OLGR officials that in order to produce sufficient evidence to initiate an undue disturbance complaint against a late-trading licensed premises, they would have to establish from the intoxicated offender(s) in the early hours of the morning their identity, the level of intoxication and the location of the last premises at which they drank before causing the disturbance observed by the resident complainant.

Attempts by community activists to bring about changes in liquor licensing in New South Wales face other challenges and setbacks. For example, a submission (11) by a coalition of Newcastle inner city resident groups, small businesses and concerned citizens to the NSW Planning System Review (calling for 'public safety' to become a specific planning objective/criterion) was not taken up.

A further erosion of the community's interest was enacted in the *Liquor Amendment (Small Bars) Act 2013* (NSW). Residents' rights to object to liquor licence applications for a new licence category of 'small bar' were removed, effective 1 July 2013. Further compounding this setback was an automatic extension of closing time for small bars to 2 am (12). Existing 'general bar' licences provided for a midnight closing at the latest.

## Conclusions

In my experience, communities adversely impacted by existing concentrations of particularly late-trading premises and/or intended problematic large-scale bulk discount bottle shops simply do not know what they need to know. For many, they are confronted for the first time with the power imbalance and the degree of micro and macro influence the alcohol industry exerts on various important decision-making processes within New South Wales Government regimes for both liquor council planning approval and licensing/complaints.

For many years, liquor licensing matters were a 'closed shop' to independent community interests. In some cases there remains a degree of resentment from government and its authorities against community members who are perceived as 'rocking the boat', seeking greater accountability, transparency, consistency, objectivity and inclusiveness in critical alcohol-related decisions that adversely impact the safety, health, amenity and reputation of their local community.

Communities are now responding to political, legal and bureaucratic barriers that impede the attainment of a safe and healthy community. This alcohol community action includes:

- mobilising an unstoppable wave of local informed community support for evidence-based, cost-saving measures to prevent and reduce alcohol-related harms
- developing a coherent multi-path strategy to achieve the above and effectively coordinate limited resources
- forming strategic alliances with other supporting independent organisations that possess specific expertise and familiarity with the broad dual liquor regulation 'mirror maze'
- taking the 'high road' by gaining support and cooperation of the local police, council, health authority, Members of Parliament, schools and other community groups, disaffected small businesses and even those within the liquor industry who are disturbed by the actions of an irresponsible minority of powerful liquor outlets
- effectively using the media with the timely and helpful provision of the community's independent evidence of the nature, extent and consequences of the alcohol-related harms, the impediments to preventing these harms and the related inability of the government to put the community's interests ahead of the industry.

The unreasonableness of placing the evidentiary burden on the community strengthens the case for a new and well-resourced public-minded independent organisation to support, empower, coordinate and defend these communities. Without this help, they face the burden of proof alone, in an asymmetrical struggle to prevent the dangerous availability, oversupply and pervasive excessive promotion of alcohol within their communities.

## References

1. Babor T, Caetano R, Casswell S, Edwards G, Giesbrecht N, Graham K et al. *Alcohol: no ordinary commodity: research and public policy*. 2nd edn. Oxford: Oxford University Press, 2010.
2. NSW Government Planning and Infrastructure. *A new planning system for NSW—white paper*. Sydney: NSW Government, 2013. Accessed 13 June 2013 <[www.planning.nsw.gov.au/a-new-planning-system-for-nsw](http://www.planning.nsw.gov.au/a-new-planning-system-for-nsw)>.

3. NSW Government Independent Liquor and Gaming Authority (ILGA). *Guideline: consideration of social impact under Section 48(5) of the Liquor Act 2007*. Sydney: ILGA, 2012. Accessed 13 June 2013 <[www.ilga.nsw.gov.au/resource/reports/Authority\\_Guideline\\_6.pdf](http://www.ilga.nsw.gov.au/resource/reports/Authority_Guideline_6.pdf)>.
4. *Cardno Pty Ltd v Campbelltown City Council [2013] NSWLEC 1056*. NSW Caselaw. Accessed 29 May 2013 <[www.caselaw.nsw.gov.au/action/PJUDG?jgmid=163950](http://www.caselaw.nsw.gov.au/action/PJUDG?jgmid=163950)>.
5. Lovejoy H. Byron forum rejects super grog-shop. *Byron Shire Echo*. 11 September 2012. Accessed 29 May 2013 <[www.echo.net.au/downloads/byron-echo/volume-27/byronecho2714.pdf](http://www.echo.net.au/downloads/byron-echo/volume-27/byronecho2714.pdf)>.
6. NSW Government ILGA. Application for removal of a packaged liquor licence LIQP700351330 to 108 Jonson Street, Byron Bay ('the Premises') for the proposed licensed business to be known as 'Dan Murphys'. 3 October 2012. Accessed 29 May 2013 <[www.ilga.nsw.gov.au/resource/reports/Dan%20Murphys.pdf](http://www.ilga.nsw.gov.au/resource/reports/Dan%20Murphys.pdf)>.
7. Sidoti C. *The challenges in liquor licensing decisions in the current regulatory environment*. Sydney: Legalwise Seminars, 2013. Accessed 14 October 2013 <[www.ilga.nsw.gov.au/resource/reports/LegalWise%20Seminar%20Paper-21Mar2013-SIDOTI.pdf](http://www.ilga.nsw.gov.au/resource/reports/LegalWise%20Seminar%20Paper-21Mar2013-SIDOTI.pdf)>.
8. NSW Government ILGA. Application for hotel (general bar) licence—the Wild Rover, Surry Hills. 7 May 2013. Accessed 13 June 2013 <[www.ilga.nsw.gov.au/resource/reports/Decision-s45-Wild%20Rover%20Grant%20Letter-7May2013.pdf](http://www.ilga.nsw.gov.au/resource/reports/Decision-s45-Wild%20Rover%20Grant%20Letter-7May2013.pdf)>.
9. NSW Government ILGA. Application for on premises liquor licence and primary service authorisation—Nomad, Surry Hills. 13 May 2013. Accessed 13 June 2013 <[www.ilga.nsw.gov.au/resource/reports/Nomad-Decision-Letter-120513-published.pdf](http://www.ilga.nsw.gov.au/resource/reports/Nomad-Decision-Letter-120513-published.pdf)>.
10. NSW Government ILGA. Application for extended trading authorisation—Mojo Record Bar. 30 July 2013. Accessed 14 October 2013 <[www.ilga.nsw.gov.au/resource/reports/Ltr-Ruttan%20J%20re%20MOJO%20Record%20Bar%20ETA%20-%2030July2013.pdf](http://www.ilga.nsw.gov.au/resource/reports/Ltr-Ruttan%20J%20re%20MOJO%20Record%20Bar%20ETA%20-%2030July2013.pdf)>.
11. Tony Brown on behalf of Coalition Newcastle inner city resident groups, small businesses and concerned citizens. Planning for safer communities. Submission to NSW Planning System Review. 4 November 2011. Accessed 29 May 2013 <[www.planningreview.nsw.gov.au/LinkClick.aspx?fileticket=e7uaJCFi0EY%3D&tabid=105&mid=516](http://www.planningreview.nsw.gov.au/LinkClick.aspx?fileticket=e7uaJCFi0EY%3D&tabid=105&mid=516)>.
12. Kirkwood I. POLL: legislation makes opening small bars easier. *Newcastle Herald*. 10 March 2013. Accessed 29 May 2013 <[www.theherald.com.au/story/1354322/poll-legislation-makes-opening-small-bars-easier/](http://www.theherald.com.au/story/1354322/poll-legislation-makes-opening-small-bars-easier/)>.



# Chapter 7

## Community engagement in liquor licensing

Lisa Buffinton

Public participation and engagement in licensing matters is essential to the achievement of transparent and democratic governance. It also results in administrative decision-making being more responsive to the public interest. In recent years there has been increasing community concern regarding alcohol-related harms and alcohol-related amenity problems, and increasing community interest in policies that address these issues. There are a number of ways in which communities are adversely affected by alcohol: they endure the noise and disruption from licensed venues; they avoid places where they feel unsafe due to alcohol use and misuse in the area; and they live alongside alcohol-related violence. These impacts push communities to try to influence the way that alcohol is made available in their local area by engaging in liquor licensing processes.

Liquor laws in New South Wales allow for the public to be involved in licensing matters insofar as they can make representations about licence applications or complaints concerning licensed venues. Although there are provisions for community input in licensing matters, aspects of the regulatory system for liquor licensing inhibit community participation. In 2013, the Foundation for Alcohol Research and Education (FARE) published *Breaking down barriers* (1), a report exploring enablers and barriers to public participation in licensing matters in New South Wales.<sup>1</sup> This chapter draws on that report and outlines the legislative and regulatory landscapes for liquor licensing in New South Wales, looking specifically at how the public participates in licensing matters and the challenges faced in the process. Although the chapter focuses on the situation in New South Wales, there are implications for all states and territories across Australia.

The basis of the chapter is an analysis of publicly available key legislative and regulatory documents on liquor licensing and community members' ability to engage with the liquor licensing system. The analysis included an examination of existing resources for community members, including government websites and fact sheets. In addition, semi-structured interviews lasting up to one hour were conducted with four interviewees in 2012. All the participants had volunteered their time in the past to represent their local communities in liquor licensing processes. These processes included objections to new licence applications and the initiation of complaints against premises whose conduct and operations were disturbing the local neighbourhoods. Interviewees came from Newcastle–Hamilton, the City of Sydney, Mount Hutton and Byron Bay in New South Wales. The interviews sought participants' views on the factors that motivated them to participate in licensing issues; their experiences of interacting with the regulatory system; the challenges they faced when interacting with the regulatory system; and the resources they considered would have been useful in assisting them to effectively participate in licensing matters. A thematic analysis of responses was used to identify common experiences and to compile a list of resources that interviewees considered would have been useful in supporting their involvement in liquor licensing processes.

<sup>1</sup> Some material in this chapter has previously been published in the FARE report: Buffinton L. *Breaking down barriers: community involvement in liquor licensing decisions in NSW*. Canberra: Foundation for Alcohol Research and Education, 2013.

# Challenges

The complexity of the legislative and regulatory environment for liquor in New South Wales poses a range of barriers to community members who seek to navigate this legal landscape. Community stakeholders are confronted with legislative, regulatory and resource-based challenges that inhibit community participation and engagement in licensing matters.

## Legislative challenges

Interview participants indicated that the liquor licensing laws are difficult to interpret, understand and use without access to people who have skills and experience in legal analysis. The complexity of the New South Wales liquor laws (from the community perspective) is partly explained by market liberalisation and the conflicting licensing and planning laws in New South Wales.

## Deregulation and market liberalisation

The liberalisation of liquor laws favours deregulation of licensing processes to support the commercial interests of licensees and licence applicants. Deregulation has made it easier to attain a liquor licence in New South Wales; however, it has not made it easier for the public to participate in and influence licensing matters. Between 1995 and 2005 the Australian Government pressured state and territory governments (under the threat of financial penalties) to liberalise markets across all jurisdictions in line with the National Competition Policy (NCP) (2, 3). The legislation relating to alcohol in New South Wales was revised in 2007 to reflect the principles of the NCP. Since these legislative changes, there has been a significant increase in the number of liquor licence applications and approvals in New South Wales (3).

Another result has been the accommodation of conflicting interests in the relevant laws and regulations. There is tension between the commercial interest in reducing the regulatory burden on licensed premises and the public interest in enforcing and expanding controls and restrictions on the availability, promotion and pricing of liquor. The objects in the *Liquor Act 2007* (NSW) (s.3) reflect these conflicting interests:

- 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.

Given that two of the objects concern industry development and regulation—with one object even indicating that this should occur with 'minimal formality and technicality'—it is apparent that the default balance of favour rests with deregulation. The revised liquor laws also assume alcohol to be an 'ordinary' consumer commodity, underplaying its qualities as a harmful product. These built-in assumptions make it difficult for the licensing system to be sufficiently responsive to alcohol-related harms and community concerns.

The NCP reforms also directed state governments to place the onus of proof on complainants and objectors. This standard requires members of the public to demonstrate the need for market intervention by the authorities as a means of rectifying problems concerning liquor licensing in a local area. Interview participants found that, in order to meet the standard of proof, they needed to have certain capacities and resources (for example, time and money) and particular capabilities (for example, research skills). Interview participants agreed that engagement in licensing matters was particularly challenging when they lacked these capacities and capabilities. In bearing the burden of proof, the reforms have had the unintended consequence of making it onerous for communities to participate in licensing matters and inform licensing decisions.

## Conflicting liquor licensing and planning laws and processes

Liquor licensing matters are further complicated by inconsistencies between licensing laws and planning laws in New South Wales. (See also Chapter 6 on this topic). Before a licence application may be granted, development consent must first be granted if there are plans to change the site of the premises intended to operate as a liquor outlet. Local governments are not supported by the Land and Environment Court (the arbitration authority for development and planning matters) if they reject development applications based on the alcohol-related risks of the proposal or in the interest of controlling liquor outlet density. This issue has been highlighted by the Lord Mayor of Sydney, Clover Moore (4):

Our biggest problem is the lack of power to say no to development applications because the area is at capacity in terms of venues and late night trading. When we've refused an application [for a premises also applying for a liquor licence] we've been overturned by the Land and Environment Court.

The conflicting planning and licensing laws heighten a community's reliance on the Independent Liquor and Gaming Authority (ILGA) to make the best decision for the community. The preference for deregulation makes it difficult for community interests to compete with commercial interests in licensing matters.

## Regulatory challenges

Deregulation and conflicting licensing and planning laws are challenges that limit the operation of the licensing system in defence of community interests in licensing matters. Two challenges presented by the New South Wales liquor regulatory system shape general public interaction and involvement in the licensing system: first, the deficiencies in the community impact statement (CIS) system and, second, the varying effectiveness of local governments as representatives and consultation mechanisms relating to community interests in licensing matters.

## Community consultation mechanisms

In New South Wales, the CIS system is the public notification and consultation mechanism for liquor licence applications. Under the *Liquor Act 2007* (NSW) (s. 48(1)) the object of the CIS process is to 'facilitate the consideration...of the impact that the granting of certain licences, authorisations or approvals will have on the local community'. A licence applicant is required to submit a CIS with the licence application. A CIS requires an applicant to list the stakeholders who have been consulted and the content and outcomes of those consultations, and to identify other stakeholders in the local area who may be vulnerable to alcohol-related harms or who are culturally sensitive to being in close proximity to a liquor outlet. (See also Chapter 8 on social impact assessment in alcohol-related decisions.)

At present, the CIS system results in limited public notification and community consultation because licence applicants are only required to directly notify and consult with local government, local police, occupants of neighbouring premises and the leaders of the local Aboriginal community. The authority has on occasion directed applicants to consult with additional stakeholders. In general, however, it is at the discretion of the applicant to identify any other relevant stakeholders. The consultation process is vulnerable to the interference of conflicting interests and non-compliance, as it is not in the applicant's interests to undertake broader consultation activities. This has serious implications for a community's awareness of the licence application and for whether there are fair opportunities for community stakeholders to comment on the application.

The effectiveness of the CIS is also limited by the narrow scope of information it includes. The CIS does not require information about the proximity of the proposed premises to existing licensed premises in the local area, and so fails to consider outlet density. Nor does it require information on the socio-demographic characteristics and the incidence of alcohol-related harms in the local area.

Consequently, these factors are only considered by ILGA if they are raised in stakeholder submissions. The narrow sample of requisite stakeholders and local factors on which applicants must report consequently compromises the effectiveness of the CIS system as a gauge of the potential social impact of a licence.

A further issue is the presumption that a lack of objections constitutes passive endorsement of an application. This principle was reflected in a decision by ILGA to approve a general bar licence in Surry Hills, an area already densely populated with liquor outlets. In this case, the decision was made on the basis that any 'adverse impacts that are likely to occur...will be relatively constrained', with mention of the 'lack of opposition to or adverse social impact analysis of the application by Police, Council and the Director General [of the Office of Liquor, Gaming and Racing (OLGR)]' (5). The absence of criticism should not be treated as equivalent to a lack of apparent grounds for critique or cause for concern—but it is. In light of these deficiencies, the CIS system regrettably fails to serve as an effective tool to gauge the potential impact of a licence approval.

As noted before, applicants are largely entrusted to report on their own compliance with the consultation and notification requirements. As a result, CIS is a 'tick box' form rather than a critical assessment of the foreseeable impact of a new licence. This is underpinned by ILGA being too far removed from the consultation processes—it mostly considers only the outcomes (that is, submitted CIS forms and stakeholder representations made in relation to the application). Chairperson of ILGA, Chris Sidoti, revealed that random 'spot checks' of licence applicants' compliance with public notice requirements in 2013 discovered that close to half of the premises inspected in Balmain and the Sydney central business district did not comply with public notification standards (6:9). Non-compliance with public notification standards has direct implications for public awareness and facilitation of community consultation and input in licensing matters. The deficiencies of the CIS system in New South Wales bear implications for the inclusion and representation of communities in licensing matters and the consideration of the public interest in licensing decisions.

### **Local governments as representatives of community interests**

Where there are plans to change a premises intended to operate as a liquor outlet, the local government is called upon to assess the development application. Interview participants indicated their concerns that the local government will not always act to defend the community's interest in minimising harms associated with licensed liquor outlets. A representative for a community group in Mount Hutton said:

[Local council] staff and the majority of councillors were uninterested [in our concerns]. They failed to understand where we were coming from...A couple of them I think thought we were Temperance-type people who were out for Prohibition. It struck me throughout this whole process that people who don't have a problem with alcohol don't see the problem at all.

The responsibility borne by local governments for licensing decisions is not supported by sufficient guidance or training by OLGR or ILGA. Local governments are not experts in the minimisation of alcohol-related harms through licensing controls, yet are expected to make decisions as if they are.

Community interaction and involvement in licensing matters is affected by the integrity and function of the CIS process, and by the level of support communities receive from the local government. The shortcomings of these regulatory channels for representation in licensing matters limit the capacity and capability of local communities to participate in and influence licensing matters.

### **Capacity of communities to participate in licensing matters**

The laws and regulatory processes of the licensing system present additional challenges to the capacity of communities to participate in licensing matters. For their submissions to be influential, community members must prepare evidence-based submissions and coordinate broader community

engagement. These tasks are burdensome and compounded by four issues: heavy research requirements to meet the onus of proof; a need to quickly develop a community network that shares the concern; the costs of participation; and the lack of access to independent advice.

### **Research requirements**

Community members must spend considerable amounts of time and effort preparing their submissions, and must be proficient in research and analysis. The onus of proof rests on the objector or complainant to show cause for a licence not to be granted, or for market intervention by the authorities. Interview respondents found that the legislative and regulatory complexities they faced required access to analytical skills and legal expertise. Where community members are not capable of meeting the research requirements, the onus of proof hinders their participation in licensing matters. It was noted by a representative for a Mount Hutton community group that the educational background of an individual affects his or her ability to conduct research and prepare submissions. The representative perceived that such capabilities contribute to a complainant or objector's ability to participate in a licensing matter: 'If you've done any kind of tertiary study then you know how to access [relevant information]...What would have made it difficult is if I didn't have those research skills.'

Community members may bear legitimate and warranted concerns, regardless of their research and analytical skills or level of education. However, public submissions may not lead to action by authorities due to an inability to meet the standard of evidence that rests on objectors and complainants.

### **Communications and networking**

Community complainants and objectors need to communicate and network with a range of stakeholders to support their submissions. Community stakeholders in New South Wales are not always notified or consulted by applicants as part of the CIS process due to the narrow list of requisite stakeholders, or due to non-compliance. Interview participants found that it was left to them to inform the rest of the community about licence applications and complaints processes already underway. Further, community representatives found that in order for their submissions to have some influence, they had to communicate licensing processes to their community and encourage community action. Community members who are inexperienced in licensing matters and public communications are handicapped in their ability to raise public awareness and engagement in licensing matters.

### **Costs of participating in licensing matters**

If communities are to improve their chances of success in a licensing matter, they need to invest time and money in researching and understanding the licensing system, in determining their options for redress and participation, in preparing submissions to the authorities and in coordinating community-wide involvement in the licensing matter at hand. These activities are costly for community members in terms of time, money and reputational risk. For many, the time taken to participate in licensing matters will be voluntary, but not all community members have the flexibility to allocate time away from paid work and other commitments. Interview respondents indicated that the time commitment itself was the primary constraint on their capacity to be involved in licensing processes.

There are also considerable personal risks for community members who challenge local liquor businesses. Community members can be vilified as 'wowsers' and 'nanny statists' by those who oppose their activities in relation to licensing matters. In the experience of one community advocate in Newcastle, his efforts to influence local licensing matters led to him being subjected to acts of vandalism, threats to his security and life, and hate campaigns waged against him in social media (7).

### **Lack of access to independent advice**

A further challenge for community complainants and objectors is to find appropriate and independent advice that is timely and affordable. Members of the public may attempt to seek pro bono advisory

services from community legal centres (for example, Legal Aid or the Public Interest Law Clearing House) but, at present, no community legal centres in New South Wales offer assistance with or have experience in licensing matters. The lack of existing advisory bodies that can meet the needs of community members in licensing matters limits their participation and influence in licensing matters. As noted by a community representative from Mount Hutton, 'We were fortunate that we had the tavern there [that had] the money to spend on solicitors and social researchers [for us]—if we didn't have that resource, we certainly as a small bunch of residents would not have been able to come up with those things'.

It is apparent that communities need professional services to support their involvement in licensing matters. In some cases, they may receive support from competing commercial interests. Such support, however, risks serving commercial interests by preventing competitors from entering or remaining in the local market. ILGA and OLGR are not inclined to accept submissions where they are endorsed and funded by conflicting commercial interests (6:3, 8). Hence, the scope of access to affordable, appropriate and supportive professional services is ever more narrow for community members who seek to influence licensing matters in New South Wales.

## Future directions

To identify appropriate solutions for community members, it is important to consider two questions: first, what do community members need in order to overcome the legislative, regulatory and resource challenges they face in liquor licensing matters? Second, what service and resource delivery models are most appropriate for stakeholders seeking to influence liquor licensing matters?

The participation and engagement of communities in licensing matters would be better supported through enhanced access to relevant information, networks and human resources. An independent public interest advisory service that specialises in liquor licensing matters could alleviate some or all of the resource burdens that communities face. However, no such entity presently exists in New South Wales. Such a service—a Community Defenders' Office (CDO)—was proposed by FARE in its 2013 report, *Breaking down barriers: community involvement in liquor licensing decisions in NSW* (1).

FARE proposes that a CDO could be modelled on the Environmental Defenders' Office NSW (EDO NSW). To meet the information, advice and resource needs of community members, a CDO would have two primary functions: a central information service (or Knowledge Bank) and an advisory service to provide communities with access to skilled personnel.

The value of the Knowledge Bank lies in its capacity to provide low-cost information resources and supportive networks in easy to understand and accessible formats (for example, web-based information). The Knowledge Bank would support fragmented and geographically dispersed community groups across New South Wales to better respond to challenges by reducing the burden of research due to lack of resources (time, money, experience in research), by providing information and network support for community group leaders, and by enhancing knowledge and confidence through supportive networks and public communications.

The advisory service function of the CDO would provide specialised supports to supplement the Knowledge Bank. These supports would include developing the public profile of the issues and public engagement options within the community, and the provision of in-house legal advice, communications assistance and researchers. In the experience of EDO NSW, communities are empowered by such professionals who visit communities and inform them of their rights and how they can be effectively involved in the issue at hand.

## Conclusions

The legislative and regulatory landscapes for liquor licensing in New South Wales and elsewhere present particular challenges for community members who seek to influence licensing decisions. These challenges were raised in interviews with community members in 2012 and concern the laws and regulatory processes that hinder community engagement and participation in licensing matters. Engagement in licensing matters is also a costly undertaking for community members in terms of time, money and reputational risks.

The establishment of a public defender in the shape of a CDO that specialises in liquor licensing matters could alleviate some or all of the resource burdens that communities face; however, no such entity exists in New South Wales. The CDO proposed by FARE in 2013 would have two primary functions: a central information service and an advisory service to provide communities with access to skilled personnel.

Some community needs, however, cannot be met through the provision of CDO-type support alone. Community involvement in licensing matters also needs to be supported by legislative and regulatory reforms that better facilitate and permit community input. Such reforms should enhance community engagement as a tool that supports the authorities to make informed decisions that best serve the local public interest.

## References

1. Buffinton L. *Breaking down barriers: community involvement in liquor licensing decisions in NSW*. Canberra: Foundation for Alcohol Research and Education, 2013.
2. NSW Legislative Assembly. National Competition Council liquor industry recommendations. Questions without notice. Hansard transcript, 17 February. Sydney: Parliament of New South Wales, 2004, p. 6163. Accessed 10 February 2014 <[www.parliament.nsw.gov.au/prod/parlment/hansart.nsf/V3Key/LA20040217025](http://www.parliament.nsw.gov.au/prod/parlment/hansart.nsf/V3Key/LA20040217025)>.
3. National Competition Council. Welcome to the National Competition Policy website. Canberra: Commonwealth of Australia, 2007. Accessed 10 February 2014 <<http://ncp.ncc.gov.au/>>.
4. Moore C. Safer Sydney Forum: 17 July 2012. 2012. Accessed 10 February 2014 <<http://clovermoore.com.au/safer-sydney-forum/>>.
5. NSW Government Independent Liquor and Gaming Authority. Application for hotel (general bar) licence—The Wild Rover, Surry Hills. 2013. Accessed 13 June 2013 <[www.ilga.nsw.gov.au/resource/reports/Decision-s45-Wild%20Rover%20Grant%20Letter-7May2013.pdf](http://www.ilga.nsw.gov.au/resource/reports/Decision-s45-Wild%20Rover%20Grant%20Letter-7May2013.pdf)>.
6. Sidoti C. The challenges in liquor licensing decisions in the current regulatory environment. Sydney: Legalwise Seminars, 2013. Accessed 14 October 2013 <[www.ilga.nsw.gov.au/resource/reports/LegalWise%20Seminar%20Paper-21Mar2013-SIDOTI.pdf](http://www.ilga.nsw.gov.au/resource/reports/LegalWise%20Seminar%20Paper-21Mar2013-SIDOTI.pdf)>.
7. Proudman D, Kelly M. Attacks on Newcastle pub lockout campaigner. *Newcastle Herald*. 28 May 2010.
8. NSW Government Independent Liquor and Gaming Authority. Application for packaged liquor licence—The Friendly Grocer Store, Lake Cargelligo. 2012. Accessed 13 June 2013 <[www.ilga.nsw.gov.au/resource/reports/Lake%20Cargelligo%20060612.pdf](http://www.ilga.nsw.gov.au/resource/reports/Lake%20Cargelligo%20060612.pdf)>.

# Chapter 8

## Social impact assessment in alcohol-related decisions

Alison Ziller

In the general context of public administration, social impact assessment (SIA) is 'the processes of analysing, monitoring and managing the intended and unintended social consequences, both positive and negative, of planned interventions (policies, programs, plans, projects) and any social change processes invoked by those interventions' (1:2). These social consequences include the impacts on affected groups of people and on their way of life, life chances, health, culture and capacity to sustain these, with a particular awareness of the impact on the more vulnerable groups in the community (2, 3). While economic and environmental impacts assessments are well-established processes and widely used in planning, SIAs have been given less attention (3). In the specific area of planning concerning liquor outlets, the recommendation of the Planning Institute of Australia that SIAs should be undertaken for controversial uses or increases in intensity should be followed (3).

In New South Wales the requirement to undertake an SIA at the time of an application for a liquor licence was introduced in 2004 as a replacement of the old public needs test, which had been deemed anti-competitive in a review under the National Competition Policy (4). Under these SIA provisions, applicants for hotel and liquor store licences were required to demonstrate that the granting of a licence would not result in a detrimental impact to the local or broader community. By 2007, however, the *Liquor Act 2007* (NSW) (the Liquor Act) had replaced this with a requirement to undertake a community impact statement (CIS). The CIS was a requirement for any application for a hotel, club or packaged liquor licence (s. 48 of the Liquor Act), and in 2013 this was extended to include some applications for small bar licences (*Liquor Amendment (Small Bars) Act 2013 No 5* (NSW), Schedule 1). It was noted by the liquor industry at the time that the CIS was to be different from an SIA; 'for example, there will be no requirement for the applicant to produce statistical information' (5:46). The only other state or territory to require a CIS is Queensland (s. 116 of the *Liquor Act 1992* (Qld)), which is quite prescriptive in what a CIS should address and does rely on the use of statistical information.

A more recent extension of the CIS process in New South Wales is the Environment and Venue Assessment Tool, which is being trialled (at the time of writing in 2013) for new liquor licence applications in the City of Sydney and the City of Newcastle (6). The assessment tool provides two overall risk assessments: location risk (which includes both external and market factors) and venue risk. Western Australia has introduced a comparable Public Interest Assessment process in which the views of the local community are canvassed and the deciding authority is made aware of the results of discussions between the applicant and the local community (7).

All these requirements are attempts to ensure that certain kinds of information are provided by the applicant. They do not, however, remove from the decision-makers an obligation to make a competent assessment about social impacts.<sup>1</sup> That is, an SIA is required even if a document required to be submitted by the applicant is called something else and has a limited scope.

1 For example, the objects of the *Liquor Act 2007* (NSW) (s. 3) include consideration of the needs of the community and that the exercise of a licence under this Act 'is required to have due regard to the following: (a) the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour)'.



The other main arena in which an assessment of social impacts can be expected is the assessment of development applications (DAs) in the land-use planning process. Again, while a document called an SIA is not a legislative requirement at the level of relevant state and territory planning Acts, a number of state governments expect that social impacts will be taken into account by the decision-makers—councils, independent panels or courts, as the case may be. For example, the *Environmental Planning and Assessment Act 1979* (NSW) requires decisions about DAs to take account of social impacts (s. 79C(1)(b)).<sup>2</sup> Decisions regarding DAs for premises where liquor will be sold frequently fall under this section.<sup>3</sup>

In Queensland, the *Sustainable Planning Act 2009* includes social impacts among the matters to be dealt with in an Environmental Impact Statement (Part 9, Division 1, s. 688) and the Queensland Government has issued and updated SIA guidelines for a number of years, most recently in July 2013 (8).

Similarly, the Victorian *Planning and Environment Amendment (General) Act 2013* states that before deciding on an application for the use or development of land, the responsible authority must<sup>4</sup> consider 'any significant social effects and economic effects which the responsible authority considers the use or development may have' (9). In addition, since 2011 proposals to use land to sell packaged liquor require both planning approval under the amendment Act and permission from Liquor Licensing Victoria. The Victorian Government's Practice Note 61 specifically includes an assessment of the cumulative impact of the proposed licensed premises on the amenity of the surrounding area (10), thus making an assessment of cumulative impacts<sup>5</sup> a decision-making criterion.

Requirements such as these affect planners at Local Government Area (LGA) level, as well as bodies delegated to make planning decisions on behalf of councils<sup>6</sup> and the courts responsible for reviewing these decisions.

Although the nomenclature for various documents is diverse, and their required content varies, the expectation that competent decisions require consideration of social impacts is the constant element. This chapter considers some of the critical issues for good decision-making about alcohol-related decisions.

## Key issues

### Preparedness

SIA is the 'poor cousin' of impact assessment. It is less frequently required or used than other forms of impact assessment, such as environmental impact assessment. It is often treated as an assessment of last resort by planners and consent authorities, such as councils, planning panels, courts and licensing authorities. In regards to both land use and licensing applications, SIAs are often seen as proposing numerous, difficult-to-quantify issues, the relative weight of which is complex and time-consuming to determine. Unlike a cost-benefit analysis, an SIA does not result in a ratio.

A consequence of these perceptions and this reluctance is a tendency to try to decide an application on the basis of some apparently simpler threshold issue, like traffic and parking. This practice renders decision-makers under-prepared when a matter comes along that is to be decided on the basis of social impacts. By contrast, the liquor industry is rarely under-prepared. Being prepared is part of levelling the playing field. The following are some ways that a consent authority can be relatively prepared:

1. Annually obtain/purchase a list of licensed premises (and gaming machines while you are at it) in your LGA or area of responsibility and get this data mapped. Use mapping technologies to show high densities of these premises. Compare and question the extent of these densities year to year. For example, have the densities intensified or spread?

---

2 At the time of writing, a new planning bill before the New South Wales Parliament is anticipated to retain this requirement.

3 Although in New South Wales existing retail premises wishing to sell alcohol may need only apply to the licensing authority.

4 Previously the Act used the word 'may'.

5 That is, a requirement to consider the ways in which social impacts may change over time with accumulating effects.

6 In New South Wales, Joint Regional Planning Panels, for example.

2. Annually update alcohol-related health and crime statistics for your LGA/area of responsibility, using information obtainable from online sites (for example, state health departments and crime research units, although these latter are not present in all states).
3. Keep this alcohol-related data on the normal agenda. For example, annually prepare a short report for your board/elected representatives/constituents/ratepayers to inform them of recent research findings, as well as trends and changes in the area for which they are responsible. Ensure that alcohol is not an issue with which these decision-makers need suddenly to become familiar.
4. Include reduction in alcohol-related harm as an aim in your organisation's strategic plan. This should be easier to do if items 1–3 above are undertaken.

## Locality

Many impact assessments and much alcohol-related research deal in one way or another with the idea of locality. Often the approach is based on ideas about locality as neighbourhood, or about the locality as the physical context of a built structure. These approaches deal with locality in terms of built form and as a small area.

In dealing with liquor matters, it is critical that practitioners and researchers do not confuse the locality of the premises with the locality of the impact of its use. The premises is a building, the use is the trade carried on in the building.

Although the locality of the building might be described in terms of metres, most alcohol-related trade is described in terms of kilometres. Further, the notion that locality is by definition so limited in geographic size as to be best described in terms of metres is not supported in recent court decisions. For example, in the New South Wales Land and Environment Court it is generally accepted that 'the nature of the development and its impacts will influence the scope of the locality to be considered' (11:para 24).<sup>7</sup>

Since locality is a relative concept, in the case of liquor matters the primary trade area of the premises should be indicative of the locality of primary impact (12). Trade area locality will usually be smaller in urban areas than in rural and regional areas. Applicants will have a good idea of their primary trade area, whether or not they are already trading, because they will have assessed their likely trade when considering their financial viability.

The applicant should be asked what they assess as the primary trade area. This is not commercial in confidence information (for example, it does not disclose volume of sales or profit margins)—it is about geography. In the absence of an answer, an assessment of the primary trade area should be obtained from an economist. Alternatively, use as a general rule five kilometres in urban areas and a 20-kilometre radius in rural and regional areas, although these may be under-estimates.

The reason this is vitally important is that where a decision is required to be made regarding impact on the local area,<sup>8</sup> poor definition of the relevant locality can omit from consideration most customers and their families. It may not seem sensible to make a decision based on the likely impact of liquor sales on, say, 10 per cent of customers, but where locality has been narrowly defined to a few streets near the building, this can be the outcome.<sup>9</sup> Such a decision then appears to be about only a few people; for example, it may be decided on the basis of an assessment of likely impact on 4000 residents when the primary trade area contains at least 30,000—that is, minimising the area defined as the locality minimises the extent of likely harm.

This also enables an argument along the lines that such a small number of people should not be allowed to stand in the way of the purchasing decisions of everyone else. That is, the small definition

<sup>7</sup> See also decisions of the New South Wales Court of Appeal in *Randall Pty Ltd v Willoughby City Council* (2005) 144 LGERA 119 and *Randall Pty Ltd v Willoughby City Council* [2005] NSWCA 205.

<sup>8</sup> Legislators often try to reduce the extent to which impacts may be taken into account in a decision by confining the assessment to local impacts; for example, s. 79C(1) of the *Environmental Planning and Assessment Act 1979* (NSW).

<sup>9</sup> See, for example, the decision in *Martin Morris & Jones Pty Ltd v Shoalhaven City Council* [2012] NSWLEC 1280.

of locality also creates the space for a 'them and us' discussion; for example, that although the residents in close proximity to the premises (them) are socio-economically disadvantaged compared to the rest of the urban locality (us), there are not very many of them. This raises another complex issue—namely, misunderstandings about the social gradient.

## The social gradient

Most people know that social ills are felt to a greater extent by people who experience multiple forms of disadvantage. This is called the social gradient.

Consumption of alcohol does not have a social gradient (13), although within that generalisation it is possible to discern differences in patterns of consumption between social groups (14). Nonetheless, while there is no social gradient to consumption, there is a strong social gradient to alcohol-related harm. This can be seen by looking at the experience of Aboriginal people who, as a group, consume alcohol slightly less frequently than non-Aboriginal people, but, when they do, suffer much higher rates of harm (15:60).

The lack of a social gradient in alcohol consumption can be misused. For example, it can be used to assert that current levels of consumption are 'normal' or that people in socio-economically disadvantaged residential areas are no more at risk of alcohol-related harm than anyone else.

Although SIA practitioners may appreciate these complexities, most decision-makers in the various consent authorities are qualified in some other field; for example, in law. These decision-makers may not readily grasp fallacious arguments relating to the social gradient in applications or proposals. This is an issue requiring clarity by the SIA preparer and alertness on the part of decision-makers.

## Evidence and proof

An impact assessment is an assessment about likely effects or consequences of a proposed event or development. An impact assessment is, therefore, by definition, both anticipatory and precautionary. It is sometimes argued that an assessment cannot be made, or is invalid, because the assessed likely impact cannot be proved. The precautionary principle exists precisely because proof is not available. In the case of most liquor-related decisions, it is particularly important to be precautionary because once the licence has been issued or the use of a premises allowed, there is rarely any going back.

This notwithstanding, lack of proof in advance is sometimes used to bully or cajole planning staff into agreeing that there is no point recommending a refusal because 'you'll never be able to prove it'.<sup>10</sup> Greater familiarity with using SIA processes may assist planners to resist such representations.

A related issue is the notion that the 'evidence' brought to bear on an SIA is somehow second-rate and inadequate. The argument goes that the evidence being used was collected about another place, at another time, with regard to a larger class of events and so on. In the social sciences it is a standard and necessary practice to apply findings from elsewhere to a specific situation.

The social sciences have a number of methods for dealing with this. One is triangulation. Triangulation refers to the use of more than one method or more than one source of information in order to check the validity of results. There is an added complication in impact assessment in that the results are not in yet.

Thus the application of the principle of triangulation to impact assessment is via examination of a consistency of research findings from many reputable, preferably peer-reviewed, sources and/or an application of evidence from several sources to the question of the likely impacts.

It is to be expected that in an impact assessment about a particular premises, development or proposal, an array of research will be examined for consistency of findings in order to make an assessment about their relevant application to the proposed event.

---

<sup>10</sup> Personal communication from more than one planning officer.

## Consultation is only one part of research

Some consent authorities consider that they have undertaken social research when they have consulted 'the community'. The community is not homogeneous or, as a whole, up to date on alcohol-related issues. In addition, the process of 'community consultation' would be more accurately described as a process of gaining feedback from interest groups. This process is an important safeguard but belongs in the category of 'necessary but not sufficient'.

Generally speaking, community consultation cannot be solely relied on to elucidate what might be in the public interest (even though some groups may make a good case for this) nor to provide and apply a systematic literature review. SIAs based on consultation outcomes alone are vulnerable to challenge.

## Consultation by applicants is only one part of consultation

Applicants to various consent authorities are often required to show that they have consulted the 'local community'. In addition to definitional issues about who populates that group, there are basic problems with relying on this process for feedback from stakeholders likely to be impacted in the locality.

These problems are exemplified in the New South Wales Independent Liquor and Gaming Authority's template 'Notice of intention to apply for a liquor licence' (16), which is required to be used by applicants to notify a prescribed list of stakeholders (17). There are a number of problems with this approach:

- the list of stakeholders is generic and deals with local and unique circumstances only via the catch-all phrase 'special interest groups or individuals'
- some stakeholders are likely to be reluctant to respond to the applicant's notice; for example, they already feel ignored and disrespected by the industry or by society at large
- the notice only gives 30 days' notice, which is not long enough for some under-staffed organisations or special interest groups to respond
- although notification of certain organisations is required, the only required method of consultation by the applicant is written notification, which may not be appropriate or sufficient for some stakeholder groups
- it can appear to groups notified that their only opportunity to comment is back to the applicant<sup>11</sup>—despite the last sentences on the 'Notice of intention to apply for a liquor licence', which state in fine print:

Any person can make submissions regarding the application directly to the Authority. The law requires that the Authority take into account any submissions made when determining on an application.

- the address or timeframe for making a submission to the Authority is not given and this option is undermined by the preceding sentences, which state:

The licence application cannot be lodged until 30 days from the date of this notice.

You will be able to view the completed CIS on the NSW Office of Liquor, Gaming and Racing website [www.olgr.nsw.gov.au](http://www.olgr.nsw.gov.au) if the application for the liquor licence or authorisation is lodged with the Authority. Notice will be provided by the applicant to you (where you provide reasonable contact details) at that time.

- the notice also states:

Your feedback will be used to compile the CIS. Unless agreed the CIS will not identify anyone who comments on the proposed application.

This gives applicants permission to summarise feedback in their own words and to collate it in such manner as they see fit. The fact that applicants have a clear interest in how this consultation process is conducted and summarised does not seem fully to have been taken into account.

---

<sup>11</sup> Personal communications regarding more than one application.

The consultation process is essentially an airing of interests. It is very important that there are clear and timely opportunities to present these directly to a consent authority.

## The template as a 'short cut' or streamlining option

Many authorities over the years have tried to enforce succinctness and brevity on applicants by imposing the use of templates. The aim is to require relevant information to be provided and to prevent the inclusion of superfluous material. The desire for succinctness is understandable. Unfortunately, a template is not the way to achieve it.

There is no such thing as a definitive list of impact issues that will cover every eventuality and local circumstance. Trying to streamline the impact assessment process with the use of a list, template or pro-forma invariably results in the presentation of irrelevant material (despite this being exactly what the list/template is allegedly designed to prevent) and the omission of other material that, in the particular circumstance, is relevant and telling.

The Independent Liquor and Gaming Authority's 'Category B community impact statement form' provides a case in point. It requires notification about the following community buildings, facilities and places located near the proposed licensed premises (17:2):

- hospitals or other health facilities
- nursing homes
- places of worship
- educational institutions
- facilities for people who are homeless
- detoxification facilities
- public parks, sporting grounds and other public facilities
- alcohol-free zones
- any area identified by police as problematic with regard to public drinking
- other.

There are a number of basic problems with this approach:

- although this looks like a comprehensive list, it is a list of buildings, facilities and places, not a list of relevant issues
- in this context, the term 'near' is likely to encourage the locality-of-the-building approach to locality rather than a definition that is relative to use
- it is entirely possible for the site to be distant from nearly all of the above categories but still be assessed as presenting a risk of significant harm to the population in the relevant impact locality
- although this might be identified under 'other', this section of the form is concerned with community buildings, facilities and places, so an applicant is unlikely to identify in this section adverse impact issues that are not associated with community buildings, facilities and places, such as behaviours that occur in private residences or privately owned facilities such as shopping malls
- because of the size of most primary trade areas, many of the services mentioned (educational and health services, for example) do not need to be 'near' the premises to be affected; for example, children with foetal alcohol syndrome do not only appear in the classroom if the school is next door to an alcohol outlet, and pre-loading does not depend on the bottle shop being near community facilities, buildings or places
- the list reflects physical determinism; that is, it amounts to poor social science
- the list also takes no account of the fact that the document is prepared by an applicant with a clear interest in the outcome—leaving the applicant to offer additional relevant information under the heading of 'other' is fanciful.

There are much better strategies available to consent authorities. First, their policy documents should state that the size of the impact assessment should be commensurate with the issues. Promulgation of this requirement would assist in reminding some SIA preparers that phonebook-sized tomes are not well regarded. The consent authority could even specify that gratuitous information provision will not assist.

Since this is unlikely to be a sufficient deterrent on its own, consent authorities could also require an executive summary of a maximum word count and indicate to applicants that the remainder of a document should be by way of provision of fuller information should the consent authority require it. That is, the executive summary, limited by word count, becomes in effect the SIA and the remainder is supplementary information, there if needed by the authority.

By accepting pro-forma-based SIAs, consent authorities undermine the impact assessment process, collect irrelevant information, and legitimise poor practice and establish it as precedent. This is not good public administration, and fails to meet the aims for which such templates were introduced and fails to support a proper assessment of likely social impacts.

## Mitigation fallacies

The online *Free Dictionary* defines ‘mitigation’ as an action that reduces or lessens the intensity or severity of an impact. A mitigation is something additional. It is not something the applicant is already required to do. For example, responsible service of alcohol is not a mitigation. Just because something may have been accepted in the past as a mitigation does not mean that it is one.

The bottom line is that a mitigation will make a difference. It should be:

- tangible
- able to be made a condition of consent
- able to be enforced without undue or unrealistic burden on enforcement officers
- durable, especially where a licence is forever.

In addition to responsible service of alcohol, a number of other mitigations are often proposed, and sometimes imposed, which fail to meet these criteria, with some examples shown in Table 8.1.

**Table 8.1: Examples of proposed/imposed mitigations and likely outcomes**

Mitigation	Likely outcome
Do not sell 4-litre cask wine	Not realistically able to be enforced during the life of the outlet Not tangible: unlikely to change alcohol purchase habits (2 x 2 litres = 4 litres)
Install closed circuit television	Not relevant where the harms of concern take place in the home or outside the perimeter of the premises Not effective in onsite harm prevention—mainly of benefit post-event
Require membership of a liquor accord	Unlikely to be the reason for licence cancellation in a few years’ time/not durable No direct link between the requirement and a reduction in harm
Close a redundant liquor outlet	Enforceable, but unlikely to have much effect, given the fact of redundancy

## Conclusions

The above pitfalls engage with the lowly status of SIAs and reinforce it. The pitfalls result in decisions that lack credibility, the method is blamed and there is reluctance to try again, and so it goes on. This is a vicious circle.

The social impacts of alcohol-related harm are extensive and serious and this vicious circle requires interruption. Each section above describes a way in which this interruption could be achieved.

In addition, some general points apply as much to SIAs as to other practices of good public administration. The following points are for staff in relevant government agencies:

- If the principal basis for concern about an application is its social impacts, do not try to deal with it exclusively via consideration of other issues like traffic. This perpetuates the low status and priority accorded social impacts and narrows the scope of the case.
- It is advisable to obtain your own SIA regarding contentious applications with social impact issues. Do not wait until the last moment to commission this SIA, as this will undermine the work of the SIA preparer. If you want an application to be properly considered, allow the preparer time to prepare.
- If the social issues are critical to a decision, also obtain an assessment of the SIA submitted with the application. This is a task requiring someone with social science skills who can examine the case presented for any misuses or misrepresentations of data. Although it is good practice to seek clarification of apparent misuses and misrepresentations of the data and to allow an applicant to make corrections, the analysis should be treated as professional advice to the consent authority.

Poor practice concerning social impact assessment is self-defeating. It discourages further SIA use, establishes poor standards as commonplace and results in precedents unhelpful to the broad aim of alcohol harm reduction.

## References

1. International Association for Impact Assessment. Social impact assessment: international principles. Fargo, ND: IAIA, 2003. Accessed 21 October 2013 <[www.iaia.org/publicdocuments/special-publications/sp2.pdf](http://www.iaia.org/publicdocuments/special-publications/sp2.pdf)>.
2. Vanclay F. International principles for social impact assessment. *Impact Assessment and Project Appraisal* 2003;21(1):5–11.
3. Planning Institute of Australia. Social impact assessment position statement. Canberra: Planning Institute of Australia, 2010. Accessed 21 October 2013 <[www.planning.org.au/documents/item/250](http://www.planning.org.au/documents/item/250)>.
4. NSW Government Department of Gaming and Racing. *Liquor Bill 2005, Liquor and Gaming Court Bill 2005: consultation drafts: summary of provisions*. Sydney: NSW Government, 2005. Accessed 15 November 2013 <[www.olgr.nsw.gov.au/pdfs/summary\\_provisions.pdf](http://www.olgr.nsw.gov.au/pdfs/summary_provisions.pdf)>.
5. Moorhouse L. New state of play. *Drinks Trade*. McMahons Point, NSW: Drinks Association, 2008. Accessed 21 October 2013 <[www.drinkstrade.com.au/ContentFiles/Documents/Drinks%20Trade/Public/Library/profiles/other%20categories/Issue%2005%20Jun-Jul%2008%20New%20State%20of%20Play%20Changes%20to%20Liquor%20Licensing%20Legislation%20profiles.pdf](http://www.drinkstrade.com.au/ContentFiles/Documents/Drinks%20Trade/Public/Library/profiles/other%20categories/Issue%2005%20Jun-Jul%2008%20New%20State%20of%20Play%20Changes%20to%20Liquor%20Licensing%20Legislation%20profiles.pdf)>.
6. NSW Government Office of Liquor, Gaming & Racing. Environment and Venue Assessment Tool (EVAT) fact sheet. Sydney: NSW Government, 2013.

7. Government of Western Australia Department of Racing, Gaming and Liquor. Public Interest Assessment, pursuant to section 38 of the *Liquor Control Act 1988*. Perth, 2010. Accessed 1 November 2012 <[www.rgl.wa.gov.au/ResourceFiles/Policies/PublicInterestAssessment.pdf](http://www.rgl.wa.gov.au/ResourceFiles/Policies/PublicInterestAssessment.pdf)>.
8. Queensland Government Department of State Development, Infrastructure and Planning. Social impact assessment. 2013. Accessed 15 November 2013 <[www.dsdip.qld.gov.au/assessments-and-approvals/social-impact-assessment.html](http://www.dsdip.qld.gov.au/assessments-and-approvals/social-impact-assessment.html)>.
9. Maddocks. Ready, set, go! Planning and Environment Amendment (General) Act 2013 (Vic) takes effect. Melbourne, 2013. Accessed 15 November 2013 <[www.maddocks.com.au/reading-room/a/ready-set-go-planning-and-environment-amendment-general-act-2013-vic-takes-effect](http://www.maddocks.com.au/reading-room/a/ready-set-go-planning-and-environment-amendment-general-act-2013-vic-takes-effect)>.
10. Rantino J. Amendment VC79 amending clause 52.27. Melbourne: Maddocks, 2011. Accessed 21 October 2013 <[www.maddocks.com.au/reading-room/a/amendment-vc79-amending-clause-52-27](http://www.maddocks.com.au/reading-room/a/amendment-vc79-amending-clause-52-27)>.
11. *Milne v Minister for Planning & Anor* [No. 2] [2007] NSWLEC 66. Lawlink. Accessed 19 November 2013 <[www.lawlink.nsw.gov.au/lecjudgments/2007nswlec.nsf/00000000000000000000000000000000/39e87181372d8779ca2572810007f2df?opendocument](http://www.lawlink.nsw.gov.au/lecjudgments/2007nswlec.nsf/00000000000000000000000000000000/39e87181372d8779ca2572810007f2df?opendocument)>.
12. Ziller A. The question of locality—case study: development application for a bulk discount liquor outlet at East Nowra, NSW. *Local Government Law Journal* 2013;18(4):196–207.
13. Australian Institute of Health and Welfare. *Australia's health 2010*. Canberra: AIHW, 2010. Accessed 15 October 2013 <[www.aihw.gov.au/publication-detail/?id=6442468375](http://www.aihw.gov.au/publication-detail/?id=6442468375)>.
14. Livingston M. *Measuring risky drinking: an examination of the validity of different episodic drinking thresholds in predicting alcohol-related harms*. Canberra: Centre for Alcohol Policy Research, Foundation for Alcohol Research and Education, 2013. Accessed 15 October 2013 <[www.fare.org.au/wp-content/uploads/2011/07/Measuring-risky-drinking.pdf](http://www.fare.org.au/wp-content/uploads/2011/07/Measuring-risky-drinking.pdf)>.
15. Australian Institute of Health and Welfare. *2010 national drug strategy household survey report*. Canberra: AIHW, 2011.
16. NSW Government Office of Liquor, Gaming & Racing. Notice of intention to apply for a liquor licence or a licence authorisation. Sydney: OLGR, 2013. Accessed 15 October 2013 <[www.olgr.nsw.gov.au/pdfs/CIS/CIS%20Notice.pdf](http://www.olgr.nsw.gov.au/pdfs/CIS/CIS%20Notice.pdf)>.
17. NSW Government Office of Liquor, Gaming & Racing. Category B community impact statement form. Sydney: OLGR, 2013. Accessed 15 October 2013 <[www.olgr.nsw.gov.au/pdfs/CIS/CIS%20Category%20B%20Form.pdf](http://www.olgr.nsw.gov.au/pdfs/CIS/CIS%20Category%20B%20Form.pdf)>.



# Chapter 9

## Liquor licence density and planning

Timothy Bradley

One of the key challenges facing planners in cities across the country is how to create an internationally competitive, 24-hour city that can support a sustainable late-night economy—without experiencing the severity of problems endured in many Australian towns and cities.

This chapter explores the extent to which the levels of alcohol-related violence and other anti-social behaviours are facilitated by the environment and how planning mechanisms can be used to help mitigate certain risk factors.

As a starting point, it is important to recognise that licensed venues produce considerable economic benefits within the community. The sector is a major employer and generates significant incomes and revenues. High concentrations of licensed venues contribute to a dynamic, vibrant night-time economy. This helps to induce local investment and provides a beacon for regional, interstate and international tourism.

The sector is also, of course, associated with significant social harms, including alcohol-fuelled violence, vandalism and anti-social behaviour.

At the heart of this issue is licence density. Density can be measured in a number of ways but generally refers to the concentration or clustering of licensed venues within a particular area (such as a Local Government Area, suburb or postcode).<sup>1</sup> Density controls—including limits on concentration and composition, urban design and supporting infrastructure—are key mechanisms through which planners can help mitigate the harms associated with alcohol and licensed venues.

Density can be artificially created—through, say, the creation of entertainment precincts or the exclusion of premises from certain areas—but is usually the outcome of deliberate and commercial decision making (1).<sup>2</sup> Businesses choose to co-locate because of the economic advantages that arise from complementarities with existing businesses (2–4). Bars and bottle shops, for example, are established in areas that also have a range of popular dining options to take advantage of the shared clientele. Hadfield (5) estimated that a pub property in the United Kingdom is worth twice as much if it is located in close proximity to existing venues. Density is the result of licensees looking to take advantage of:

- an increase in the size of the market that businesses are looking to serve
- the spread of innovative ideas through the industry
- increased availability of skilled labour

1 Alternative measures of density include venues per capita or venues within a specific distance. The choice of measurement is often dictated by data availability.

2 The benefits of co-location are an example of 'agglomeration economics'. This literature is underpinned by the concepts of economies of scale and network effects. In its basic form the idea holds that the clustering of related firms leads to significant reductions in the cost of production through access to increased suppliers and customers that a firm could not have achieved operating in a standalone fashion.

- reduced costs due to closer location to suppliers
- localisation close to specific infrastructure
- the 'magnetic' effect of destination 'eat streets'.

Density produces a range of public benefits that are well recognised by local and state governments that seek to increase density as part of planning and development strategies. Other businesses benefit, for example, from 'spill overs' that are produced when a new venue opens up and attracts additional patrons to a location. Consumers benefit from increased density through increased diversity and choice. Residents benefit from the amenity value and a desire to live near the vibrant heart of the city.<sup>3</sup>

However, the same flows of people that advance the benefits of density are also the source of its social harms. The majority of the (non-domestic) violence relating to alcohol consumption occurs not on licensed premises but outside in public areas. 'Hot spots' for alcohol-related violence often include taxi ranks, fast food venues, footpaths and queues at venues.

For this chapter, the discussion about the benefits and costs of density has been deliberately separated. This has been done to provide a framework for thinking about the design of density solutions, which should have the aim of maximising benefits while minimising costs. The chapter begins with a brief summary of the literature linking density and social harm and then considers the relative merits of tools available to planners to reduce those impacts.

## Licence density and social harm

High density levels of liquor outlets potentially elevate the risk of harm in a number of ways. Licensed premises that are bunched within an area are likely to compete on price and promotions (making alcohol available at a lower cost to patrons) and induce large crowds of visitors. This in turn is likely to affect heavy rates of sessional drinking, alcohol-related injuries and violence (7). Circuit drinking (or pub/bar hopping) is also more likely in such environments (8).

The empirical evidence on the linkages between licensed venues, violence and anti-social behaviour is well established. Licensed venues have been linked to a range of alcohol-related problems, including violence, malicious damage, pedestrian collisions, injuries, driving while intoxicated, motor vehicle accidents and suicides (9). Burgess and Moffatt (10), for example, found a relationship between increased liquor outlet density and assaults within the City of Sydney. They conducted a spatial analysis of the clustering of liquor outlets and the location of assaults in the Sydney local government area and found that in 2008 assaults were highly concentrated around clusters of licensed premises. The highest incidence of assault occurred in George Street (central business district), Darlinghurst Road (Kings Cross) and Oxford Street (Darlinghurst), with a lesser incidence in King Street (Newtown) and Glebe Point Road (Glebe). However, their model used a log form regression technique that did not control for other variables.

But what of the relationship between density and violence? Is the relationship between violence and licensed venues driven by density per se, or is it just a product of greater numbers of venues? Here the literature is divided. Livingston (11) addressed this question specifically in an analysis of Greater Melbourne. He found that once the outlet density of pubs in a postcode area reached a critical point, violence increased considerably.

Contradicting this, Burgess and Moffatt (10) found no strong evidence to suggest that density was a statistically significant predictor of violence. Their analysis showed that the relationship between licensed venues and assaults was linear—a consequence of the number of premises, not

---

<sup>3</sup> Vibrancy is one of the most commonly reported positive social impacts of liquor density, but it is hard to define and measure. It refers to a place where people have many opportunities to meet at different venues that offer choice in the environment in which to socialise. Abelson et al. (6) used a comprehensive model of house prices, inclusive of access and size variables, to examine the relationship with urban density. Contrary to their expectations, they found that urban density had a non-negative effect on house prices.

the concentration. A limitation of this study is that the analysis was restricted to a specific local government area (the City of Sydney), where density has (arguably) reached saturation.

Indeed, the literature is generally more supportive of Livingston's findings. Although there are inconsistencies in the nature and scale of the relationship, the international literature has consistently found significant positive relationships between density and violence (12–16).

In addition to the associated violence and anti-social behaviour, density also imposes economic costs on the community. The main costs are those imposed on public services such as the police, ambulance and hospitals. Councils face regular clean-up costs, as do firms and residents.

From the consumer perspective, greater competition may also have adverse outcomes. Greater competition is generally viewed as a positive force in other sectors when it leads to product improvements, increased consumer choice and lower prices. But lower prices can be a disadvantage in terms of public health outcomes, and product changes are not always in the public health interest. While competition is generally associated with impacts on price, competition between businesses can also occur across non-price factors. The positive outcomes of non-price competition include improved venue amenity and better entertainment offerings. Non-price competition can also lead to negative outcomes such as weaker compliance with regulations, reduced industry participation and poorer adherence to the responsible service of alcohol laws.

## Mitigating the harms of density

The social harms associated with licence density, and alcohol-fuelled violence in particular, are serious issues for all concerned and the community has demanded a response to provide public safety. Policy-makers have responded with a range of approaches, largely dictated by the severity of the problem facing a particular city or jurisdiction.

Discussed below are four approaches that planners can use to address alcohol-fuelled violence. These approaches—imposing density limitations, adopting risk mitigation practices, providing supporting infrastructure and making improved design choices—can all contribute to reducing alcohol-fuelled violence.

### Density limits

Licence limits are perhaps the most obvious lever a planner can pull in order to address density. Around the world, limits have been imposed in pursuit of many objectives (12). For instance, limits have been introduced as a means to discourage consumption by increasing the effort required for the average drinker to be supplied. Limits have also been imposed with the aim of limiting competition and thereby removing incentives for sellers to 'cut corners'. Alternatively, limits have also been introduced to ensure sufficient space is available for non-licensed venues.

In Australia, limits have been introduced specifically to reduce violence. The logic presumed is that to the extent that there is a relationship between growth in licence density and growth in alcohol-related violence, constraining growth should constrain violence. The Victorian Government, for example, introduced a package of measures in May 2008 that included a moratorium on new late-trading venues within four inner-Melbourne municipalities—Melbourne, Stonnington, Port Phillip and Yarra—specifically to address violence associated with late trading. The New South Wales Government introduced more severe measures in June 2009—a freeze on the granting of applications for all liquor licences and authorisations. The freeze applied to applications within three areas of the City of Sydney: Oxford Street, Darlinghurst; Kings Cross; and CBD South. The policy was initially to be set in place for 12 months, but has been extended a number of times and remains in place. Such freezes are essentially a mode of density limitation, at least in the short term.<sup>4</sup>

---

4 Both of these policies have been independently reviewed, but the findings have not been made publicly available.

Similar examples of such policies can be found overseas. The Granville Street Entertainment Area in Vancouver, for example, has been designated 'at saturation' and the council has placed a moratorium on new liquor licences in the area. A slightly different approach has been operating in New York City for some time. There, the Alcohol Beverage Control Law limits density by prohibiting new on-premises licences within a 500-foot radius of three or more existing licences (17).

Rather than imposing strict moratoriums, planners can impose density limits in other ways. Legislation in South Australia, for example, imposes a needs test on new applicants that requires applications to demonstrate how a 'licence is necessary in order to provide for the needs of the public in that locality' (*Liquor Licensing Act 1997* (SA), s. 58(1)). Californian legislation limits the number of licences to sell spirits to a fixed per capita ratio. Currently, the limit is one on-premises licence per 2000 persons in the county and one off-premises licence per 2500 persons (18).

The extent to which such policies can *reduce* violence is limited. Restrictions on granting new licences do not address the problems associated with existing venues. Rather, they are a stopgap measure to deter any problems that might arise from new venues. Accordingly, and as was the initial intent of the City of Sydney freeze, such policies should be considered a temporary measure to 'halt the growth in patron numbers...and to prevent a further deterioration of safety and amenity while longer-term, integrated, evidence-based and sustainable solutions were developed and implemented' (19).

## Operating conditions and risk mitigation

Regardless of how effective moratoriums are as mechanisms to halt violence, they are a very blunt instrument. They assume that the area where they are being imposed has surpassed a point at which the societal costs of new venues exceed any benefits generated.

Certainly, in some circumstances this may be true. However, the problem with this approach is that it fails to recognise inherent differences between venue types, and that some operating practices are riskier than others. Livingston's (20) longitudinal study of liquor outlet density and domestic violence rates in Melbourne found a positive relationship of the density of hotel, packaged liquor and on premises licences with reported rates of domestic violence. The three different types of licensed premises were all associated with increased risk, but the effect sizes varied. Specifically, the risk for hotel and on premises licences was very small, while the effect for packaged liquor licences was large. Studies have found that an increase in liquor outlet density in Melbourne had a positive impact on the number of reported assaults, but a higher impact was registered for the density of hotel licences (11).

Similarly, late-night trading is regularly identified by stakeholders as a key source for heightened levels of violence (21, 22). Venues that close prior to midnight have been recognised by a number of jurisdictions as being inherently less risky than those that trade through to the early morning.

A more nuanced approach than density limits and moratoriums would be to recognise the differences between licences and mitigate risks by applying licence operating constraints.

Restricted operating hours in Newcastle (including lockouts and closing times), which have been in place since 2008, have been shown to be highly effective in reducing alcohol-related violence. The late-night assault rate in central Newcastle fell by a third in the 18 months to September 2009, without evidence of violence being displaced to the earlier hours of the evening or neighbouring areas (22). A more recent study has shown the effects have persisted over the five years to March 2013 (23). (Refer also to Chapter 14 in this book on limits to trading hours.)

Critics of limits on trading hours have commented that such restrictions are not synonymous with internationally competitive, 24-hour cities. There are, however, examples of major cities where opening hours are limited. Most licensed venues in Paris, for instance, are permitted to trade only until 2 am. Venues that trade later than this may be required to stop serving alcohol for a period of time before they close. Coffee shops in Amsterdam are permitted to trade until 1 am, with only nightclubs allowed to trade until 5 am (17).

Risk-based licensing regimes have been adopted in a number of jurisdictions as a more 'efficient' alternative to blanket restrictions.<sup>5</sup> In principle, risk-based licensing schemes seek to internalise a venue's social costs within the licence fee. Say, for example, that given the level of existing density, the expectation is that a new late-trading hotel will heighten the risks of violence in an area. This would mean that the new venue will require additional police, ambulance and hospital resources. Under a risk-based licensing scheme, the licensee would be required to pay for those anticipated costs as part of an annual fee.

Risk-based licensing schemes can be quite sophisticated. A scheme can be designed to account not only for licence type, but also size, location, trading hours, compliance history and other key risk factors. Schemes can also be designed to encourage best practices with regards to security, lighting, food services, seating and signage, for example. In order to be both efficient and effective, risk-based licensing regimes require a strong evidence base.

Under the Australian Capital Territory's risk based licensing model, a different licence fee is charged depending on two factors: the capacity of the venue and the hour of latest trade. (Refer also to Chapter 16 in this book on risk-based licensing in the Australian Capital Territory.) Venue capacity is used as a proxy for the amount of alcohol sold on-premises, with an occupancy loading of 80 patrons considered the cut-off point between high and low volume traders. The price of a licence also rises the later the venue trades, with pricing increments increasing at 12 midnight, 2 am, 4 am and 5 am. When submitting an application form to obtain a licence, applicants are required to include a Risk Assessed Management Plan (RAMP). A RAMP is a plan that outlines procedures, practices and arrangements for selling liquor at a premises. RAMPs have also been introduced in Queensland as a harm minimisation strategy and are required for all licence types and also for restricted liquor permits.

The New South Wales Government announced the introduction of a risk-based licensing scheme in January 2014 (24). Under the tiered New South Wales risk-based licensing model, all licences are subject to a base fee depending on licence type, and additional risk-based loading fees are applied to reflect the risk associated with each venue. The risk-based loading fees depend on hours of authorised late trade, compliance history, patron capacity and location. All venues that have approved authorised trading are subject to a trading hours loading fee. The late trading hour fee is applied to licences that trade between midnight and 1.30 am and then increases for licences that trade after 1.30 am (the time the lockout commences).

The compliance history loading fee applies to licences that have a compliance history for the previous calendar year. If a licensee is required to pay the compliance loading fee, the licence is also subject to two additional risk-based loading fees; these are patron capacity and location. The patron capacity loading has four levels, with the lesser fee for 60 patrons or less and the highest fee for licences with capacity for more than 301 patrons. The location risk-based loading fee is applied to licences within a prescribed precinct under s. 116C of the *Liquor Act 2007* (NSW).

## Supporting infrastructure

The above approaches neglect to consider how the environment in which these licensed venues operate contributes to (or detracts from) consumer behaviour. Weekend trading on a Friday and Saturday night in and around Kings Cross attracts a crowd equivalent to that for a major event. An estimated 30,000 persons descending on the city is akin to filling three-quarters of the Sydney Football Stadium. The difference, however, is that when the Sydney Football Stadium empties, there are trains and buses to take visitors home. In contrast, the last train to leave Kings Cross Station leaves at 1.44 am—before licensed venues close.

How could the provision of adequate late-night public transport assist in moving people on and reduce the risks of violence or malicious damage? What other strategies are available to mitigate these risks?

Inadequate transport options can result in large groups of frustrated and intoxicated people congregating in predominately unsupervised areas. The inability for revellers to promptly leave an area was identified

---

<sup>5</sup> Here, the term 'efficient' is used in an economic sense and refers to incremental benefits being greater than costs.

as a contributing factor to a number of alcohol-related problems. Scarcity or absence of transport also increases the risks of road traffic accidents, as intoxicated individuals walk or drive after a night out. These problems have been particularly evident in and around taxi ranks and in many locations have resulted in the introduction of marshals to manage the exit of revellers from these precincts.

An effective supply of late-night transport to serve the peaks of demand that are likely at both the beginning and the end of lockout periods is particularly important. This is especially so in circumstances where licensed premises all close around a particular time. The provision and management of safe late-night transport into and, most importantly, out of nightlife areas can offer a key contribution to violence and injury prevention, as well as helping to make city centres more attractive and welcoming to visitors.

Some cities have significant commuter and suburban rail systems and these can provide effective dispersal from city centres if appropriate late-night services are developed. Issues regarding customer and staff safety largely mirror those that apply to bus services, encompassing the need for security management at the beginning, for the duration and at the end of the journey.

## Public realm design

Planners can help to address alcohol-fuelled violence by identifying risk factors within the public realm and making improved design choices. (By contrast, see Chapter 11 for a discussion of the impact of licensed venue design.)

Ensuring that the general layout of an area around a licensed premises is free from congestion and excessive crowding and provides ample access points can serve to reduce aggression among revellers (7). Minimising noise and light pollution improves the amenity of an area for local residents. The availability of public toilets can reduce the incidence of public urination and anti-social behaviour. The management of glassware outside premises is a concern in some locations where bottles have been used as weapons, and removing access to them can potentially reduce this risk. Public seating may also prevent the dispersal of visitors from the area and increase the possibility of conflict, as well as noise and litter pollution.

It could be argued that vibrant entertainment precincts, created through liquor outlet density, are safer than in more isolated areas. Individuals in isolated areas, for example, may be more likely to fall victim to robbery or sexual assault. Premeditated crimes of this nature are less likely to occur in areas that are densely populated and well lit. A review of 13 studies of street lighting interventions in the United Kingdom and United States, for example, found that crime decreased by 21 per cent in areas that experienced street lighting improvements compared to similar areas that did not (25). Lighting and effective monitoring can help to improve safety and perceptions of criminality. Measures in this area include the use of closed circuit television, effective street lighting and active/transparent frontages (for example, large glass windows that allow surveillance of the venue).

The capacity to regulate the cumulative impact of density or clustering of licences has been included in the Victorian Planning Provisions. The Victorian Government has developed guidelines to assist local councils determine the cumulative impact of an additional licensed premises, which includes elements of both density and clustering (26). In particular, the guidelines provide an outline of issues that should be considered when assessing the cumulative impact of licensed premises. These include:

- planning policy context
- surrounding land use mix and amenity
- the mix of licensed premises
- transport and dispersal
- impact mitigation.

The amount of detail for each response is expected to be proportional to the likely and cumulative impact that a proposed venue may have. For example, an application for a large venue that is likely to have a great impact should be supplemented with a detailed study or report and prepared by a qualified individual to explain how the cumulative impact will be managed.

## Conclusions

Planning policies are not a panacea against alcohol-fuelled violence, but they do have a role to play. An effective planning policy is one that seeks to maximise the public benefits of density, while minimising the social costs. It is necessary to recognise the importance that environmental factors play in the night-time economy and the role that planning can play in addressing those concerns.

The moratoriums imposed on new licences in Kings Cross and inner Melbourne may be effective in stopping further increases in licence density, but they do little to address the existing sources of violence. Furthermore, moratoriums impose an opportunity cost on the community by restricting growth and competition within the sector.

By themselves, it is difficult to imagine how moratoriums can do more than maintain the status quo. Indeed, in order to reduce violence and anti-social behaviour, measures need to either reduce density or manage its impacts. While mechanisms for the former have not been in vogue for some time,<sup>6</sup> most jurisdictions have opted for mechanisms for the latter (27).

As much of the violence occurs in or around licensed premises, the environment in which alcohol is sold needs to be given primary attention. The layout, size and space on pedestrian routes can impact on crowding and thus conflict. Appropriate late-night public transport options are vital for dispersion and moving people away from areas, as well.

In order to be effective and efficient, policies need to carefully weigh the positives of density against its costs. Those jurisdictions that have taken a more tailored approach, by actively seeking to develop safe, vibrant and diverse entertainment precincts, while addressing the causes of harms, are likely to have more success in the longer term.

## References

1. Porter M. *The competitive advantage of nations*. New York: The Free Press, 1990.
2. Ghosh A. The value of a mall and other insights from a revised central place model. *Journal of Retailing* 1986;62(1):79–97.
3. Betancourt R, Gautschi D. The demand for retail products and the household production model. *Journal of Economic Behavior & Organization* 1992;17(2):257–75.
4. Miller C, Reardon J, McCorkle D. The effects of competition on retail structure: an examination of intratype, intertype and intercategory competition. *Journal of Marketing* 1999;63(4):107–20.
5. Hadfield P. *Bar wars: contesting the nightclub in contemporary British cities*. Oxford: Oxford University Press, 2006.
6. Abelson P, Joyeux R, Mahuteau S. *Modelling house prices across Sydney with estimates for access, property size, public transport, urban density and crime*. Working paper no. 181/2012. Adelaide: Flinders University, National Institute of Labour Studies, 2012.
7. Wickham M. *Alcohol consumption in the night-time economy: policy interventions*. Working paper 55. London: Greater London Authority, 2012.
8. Livingston M. Alcohol outlet density and assault: a spatial analysis. *Addiction* 2008;103(4):619–28.
9. Popova S, Giesbrecht N, Bekmuradov D, Patra J. Hours and days of sale and density of alcohol outlets: impacts on alcohol consumption and damage: a systematic review. *Alcohol and Alcoholism* 2009;44(5):500–16.

---

6 The Victorian Licences Reduction Board, for example, operated between 1907 and 1916. During this time, the Board oversaw the compulsory state purchase and closure of the 'most noxious' hotels. More than 1000 hotels were closed down during this period (26).

10. Burgess M, Moffatt S. *The association between alcohol outlet density and assaults on and around licensed premises*. Crime and Justice Bulletin no. 147. Sydney: NSW Bureau of Crime and Statistics and Research, 2011.
11. Livingston M. A longitudinal analysis of alcohol outlet density and assault. *Alcoholism: Clinical and Experimental Research* 2008;32(6):1074–9.
12. Livingston M, Chikritzhs T, Room R. Changing the density of alcohol outlets to reduce alcohol-related problems. *Drug and Alcohol Review* 2007;26(5):557–66.
13. Connor J, Kypri K, Bell M. Alcohol outlet density, levels of drinking and alcohol-related harm in New Zealand: a national study. *Journal of Epidemiology* 2011;65(10):841–6.
14. Speer P, Gorman D, Labouvie E, Ontkush M. Violent crime and alcohol availability: relationships in an urban community. *Journal of Public Health Policy* 1998;19(3):303–18.
15. Constanza S, Bankstown W, Shihadeh E. Alcohol availability and violent crime rates: a spatial analysis. *Journal of Crime and Justice* 2001;24(1):71–83.
16. Britt H, Carlin B, Toomey T, Wagenaar A. Neighbourhood level spatial analysis of the relationship between alcohol density and criminal violence. *Environmental and Ecological Statistics* 2005;12(4):411–26.
17. Matthews S. *To compare regulatory and planning models which reduce crime in the night time economy*. Sydney: The Winston Churchill Memorial Trust of Australia, 2009. Accessed 23 April 2014 <[www.churchilltrust.com.au/media/fellows/2009\\_Matthews\\_Suzanne.pdf](http://www.churchilltrust.com.au/media/fellows/2009_Matthews_Suzanne.pdf)>.
18. California Department of Alcoholic Beverage Control. Frequently asked questions. 2014. Accessed 23 April 2014 <[www.abc.ca.gov/questions/licenses\\_faq.html](http://www.abc.ca.gov/questions/licenses_faq.html)>.
19. Moore C. Extension of liquor and footway license freeze. Minute by the Lord Mayor, file no. S076570. Sydney: City of Sydney, 2011. Accessed 19 March 2014 <[http://meetings.cityofsydney.nsw.gov.au/council/about-council/documents/meetings/2011/Council/270611/110627\\_COUNCIL\\_ITEM32.pdf](http://meetings.cityofsydney.nsw.gov.au/council/about-council/documents/meetings/2011/Council/270611/110627_COUNCIL_ITEM32.pdf)>.
20. Livingston M. Alcohol outlet density and harm: comparing the impacts on violence and chronic harms. *Drug and Alcohol Review* 2011;30(5):515–23.
21. Chikritzhs T, Stockwell T. The impact of later trading hours for hotels on levels of impaired driver road crashes and driver breath alcohol levels. *Addiction* 2006;101(9):1254–64.
22. Kypri K, Jones C, McElduff P, Barker D. Effects of restricting pub closing times on night-time assaults in an Australian city. *Addiction* 2011;106(2):303–10.
23. Kypri K, McElduff P, Miller P. Restrictions in pub closing times and lockouts in Newcastle, Australia five years on. *Drug and Alcohol Review* 2014; 33(3):323–6.
24. Office of Liquor, Gaming and Racing. Risk-based licence fee scheme. Sydney: NSW Government Office of Liquor, Gaming and Racing, 2014. Accessed 29 April 2014 <[www.olgr.nsw.gov.au/risk\\_based\\_licence\\_fee.asp](http://www.olgr.nsw.gov.au/risk_based_licence_fee.asp)>.
25. Welsh B, Farrington D. Effects of improved street lighting on crime. *Campbell Systematic Reviews*, 2008:13. Accessed 19 March 2014 <[www.crim.cam.ac.uk/people/academic\\_research/david\\_farrington/light.pdf](http://www.crim.cam.ac.uk/people/academic_research/david_farrington/light.pdf)>.
26. Public Record Office Victoria. Agency VA 2906 Licences Reduction Board 1907–1968. Melbourne: Public Record Office Victoria, n.d. Accessed 17 February 2014 <[www.access.prov.vic.gov.au/public/component/daPublicBaseContainer?component=daViewAgency&entityId=2906](http://www.access.prov.vic.gov.au/public/component/daPublicBaseContainer?component=daViewAgency&entityId=2906)>.
27. Victorian Department of Planning and Community Development. Licensed premises: assessing cumulative impact. Practice note 61. Melbourne: Department of Planning and Community Development, 2011. Accessed 19 March 2014 <[www.dpcd.vic.gov.au/\\_\\_\\_data/assets/pdf\\_file/0005/60809/PN61-Licensed-premises\\_Assessing-cumulative-impact.pdf](http://www.dpcd.vic.gov.au/___data/assets/pdf_file/0005/60809/PN61-Licensed-premises_Assessing-cumulative-impact.pdf)>.



# Chapter 10

## Liquor regulation: beyond the night-time economy

Michael Livingston

The role of liquor licensing in reducing or facilitating alcohol-related harm is increasingly the focus of public and policy attention. In particular, media and governments have focused heavily on late-night entertainment precincts and alcohol-related violence. This chapter summarises local and international research evidence that highlights the broader range of health and social problems that alcohol contributes to and the potential role of the packaged liquor market in driving these harms. The key argument of this chapter is that public health researchers, governments and regulators should pay more attention to the effective regulation of the packaged liquor industry in order to reduce the broader range of alcohol-related harms in Australia.

In recent years, the potential for liquor licensing policy to reduce alcohol-related harm has been increasingly recognised around Australia. This has been driven, at least in part, by extensive media coverage of alcohol-related violence in and around late-night entertainment precincts, which has led to an ongoing policy focus on nightclubs, pubs and bars (1–4).

In Victoria, for example, both Labor and Coalition governments have expended much policy energy on reducing late-night violence. This has included a controversial and unsuccessful trial of late-night lockout conditions for licensed premises, an ongoing cap on the number of late-trading licences in the four major entertainment precincts in Melbourne and the implementation of a risk-based licensing scheme that emphasises the risks associated with large, late-trading venues (5, 6). In New South Wales, legal conditions on 'risky' venues have been enacted, with restrictions on the kinds of beverages that can be served, the availability of glass and requirements for responsible service of alcohol marshals, among others. Similar restrictions were rolled out in Kings Cross following the assault-related death of Thomas Kelly (7), followed by more restrictive measures in early 2014, including a 1.30 am lockout and cessation of alcohol sales at 3 am (8). In Newcastle, the Liquor Administration Board implemented mandatory closing hours for late-trading pubs, alongside a lockout and a suite of other measures (for example, restrictions on the sale of shots). In 2010, the Queensland Government ran an inquiry into alcohol-related violence, with recommendations and policy outcomes largely aimed at regulating entertainment precincts and banning problematic drinkers from venues (9).

Many of these measures are valuable and important policy steps—indeed, the Newcastle restrictions have resulted in sharp reductions in alcohol-related violence (10)—but the overarching policy focus on late-night on-premises drinking highlights a narrow view of alcohol-related harms.

Alcohol-related violence represents a small component of the total health and social harm related to alcohol in Australia. Indeed, in a comprehensive analysis of alcohol's contribution to the burden of disease and injury in Australia, violence did not figure in the five major outcomes attributable to alcohol (11). Even focusing specifically on violence, the kind of assaults that have been the focus of most recent policy changes (assaults in public places, usually involving strangers) make up less than half of all alcohol-related violence, with domestic violence at least as prevalent as public violence (12). Furthermore, much of the violence in entertainment precincts can be linked to the consumption of

packaged liquor. Recent studies highlight the prevalence of pre-drinking among attendees at late-night drinking venues, with around two-thirds of young people reporting pre-drinking an average of five standard drinks before going out (13). There is thus clear evidence that alcohol policies that aim to reduce alcohol-related harm in society need to encompass more than interventions in late-night entertainment precincts. Broad population-based policies such as alcohol taxation and restrictions on alcohol promotion are key approaches here (14), but liquor licensing policy also has a role to play.

In spite of this, few liquor licensing policy interventions have been aimed at the broader range of alcohol outlets in Australia. The 1990s and early 2000s saw a gradual relaxation of alcohol regulation in Australia, particularly influenced by the National Competition Council and the National Competition Policy (see Chapter 3). Under National Competition Council pressure, caps on ownership were lifted, providing a means for the major supermarket chains to expand their packaged liquor holdings (15). More recently, some jurisdictions have implemented risk-based fees, which require higher fees for late trading, but they generally treat packaged liquor outlets as relatively low risk (16, 17). The most solid attention to packaged liquor has been in Victoria, where planning regulations have been explicitly modified to ensure consistency between packaged liquor outlets and other outlet types (5). However, these changes have proved difficult to utilise and have thus far had little impact on the ability of local governments to influence licensing outcomes at the local level (18). The recent developments in New South Wales (8), where packaged liquor outlets have been restricted from trading after 10 pm state-wide, suggest some shift in focus towards regulation of packaged liquor, but this is a rare example of concrete policy in this space.

This lack of policy attention paid to packaged liquor outlets is concerning, given their increasing dominance of the alcohol market in Australia. Industry reports estimate that around 80 per cent of all alcohol sold in Australia is sold by packaged liquor outlets (19), a proportion that is steadily increasing (20). This has been driven in part by the increased involvement of the major supermarket chains in the packaged liquor market and the related expansion of the number and type of retail outlets (21). This expansion has been resisted by local communities in most Australian states, but with limited success. In Victoria, packaged liquor outlets have been a battleground for planning and liquor licensing decisions, with a series of new outlets unsuccessfully opposed by local governments (see, for example, 18, 22, 23). Similarly, communities have mounted (largely unsuccessful) objections in New South Wales to the opening of new Dan Murphy's stores (24) or the licensing of existing Aldi supermarkets (25).

## The research evidence

There is a growing body of research evidence suggesting that effective liquor licensing policies that target packaged liquor outlets can contribute to reductions in a broad range of alcohol-related harm. Historically, studies of large changes to the packaged liquor environment have consistently found substantial impacts on alcohol consumption and related harm. For example, the introduction of beer to grocery stores in Finland increased the number of places alcohol could be bought twenty-fold. This policy change resulted in sharp increases in consumption levels and alcohol-related harm in Finland, particularly affecting heavier drinkers (26). Similarly, the introduction of medium-strength beer to Swedish grocery stores in 1965 produced substantial increases in total alcohol consumption and alcohol-related harm, which were reversed when this policy change was overturned in 1977 (27). In New Zealand, the introduction of wine into supermarkets greatly increased the number of places it was sold, increasing sales by around 17 per cent, with no corresponding decline in other beverage sales (28).

At the local level, increasing cross-sectional evidence shows that heavy drinking by young people is higher in neighbourhoods with higher densities of packaged liquor outlets (29–33). More compellingly, there is growing longitudinal evidence linking packaged liquor outlet density and alcohol problems. This provides a more robust assessment of the potential relationship between alcohol outlet densities and problems, and provides more reliable estimates of the potential change in harm rates given a change in outlet density.

Studies in this tradition have reinforced the likely causal relationship between the density of packaged liquor outlets and rates of harm from alcohol. For example, Gruenewald and Remer (34) used data from 581 Californian zip codes across six years, finding that both off-premises outlets and bar densities were associated with assault rates over time. Also in California, similar approaches have found longitudinal relationships between alcohol outlet density and child maltreatment (35), intimate partner violence (36) and traffic accidents (37) using small area data. A study using a broader geographical basis and larger spatial units found significant correlations over time between outlet densities and youth homicide rates in the 91 largest cities in the United States (38).

There is similar evidence from Australia. In particular, a series of longitudinal studies using postcode-level data in Melbourne has highlighted the positive relationships between changes in the density of packaged liquor outlets and changes in rates of assault, domestic violence and chronic alcohol-related disease (39–41). The results of these studies suggest that, in an average postcode, a 10 per cent increase in the density of packaged liquor outlets would lead to approximately:

- a 1 per cent increase in assaults recorded by police and a 0.5 per cent increase in hospitalisations due to assault
- a 3.3 per cent increase in family violence incidents recorded by the police
- a 1.9 per cent increase in hospitalisations due to alcohol-specific chronic disease.

These longitudinal studies have been supplemented by two cross-sectional studies examining the link between packaged liquor outlet densities and drinking behaviour. The first, a study of young adult drinkers (aged 16–24) in Victoria (33), examined factors that predicted very high-risk drinking patterns (20-plus drinks in a session, monthly or more often for males, and 11-plus drinks in a session, monthly or more often for females), finding that packaged liquor outlet density was significantly related to this type of drinking. Although the effect size appears modest, in a hypothetical suburb with one thousand 16–24 year olds, a single additional outlet would, on average, increase the number of young people drinking in this extremely dangerous way by six (to 1006).

More recently, a study of adult drinking found that the density of packaged liquor outlets at the local level was positively associated with rates of episodic risky drinking. Respondents living in areas with eight or more outlets within a one kilometre road distance were more than twice as likely to report regular risky drinking, even with a range of socio-demographic factors controlled (42).

A study from Western Australia made use of the detailed sales data collected in that state to examine the relative impact of density of packaged outlets and volume of alcohol sold on local rates of assault (43). The findings—that, for packaged liquor outlets, sales matter more than density—suggest that the size of the packaged outlet may be important, with outlets that sell a greater volume of alcohol contributing more to local-level problems than those that sell less.

There is thus strong and consistent evidence that the number, distribution and type of packaged liquor outlets at the local level—key concerns for planning and liquor licensing regimes—are important drivers of alcohol-related harm. There have been few studies of other potential policy interventions aimed at packaged liquor outlets, but there is some suggestive evidence that trading hours (44) and the regulation of minimum prices (45) may be effective approaches.

The regulation of packaged liquor outlets may also provide a means for government to reduce socio-economic disparities in health outcomes in Australia. There is increasing evidence internationally that packaged liquor outlets tend to cluster in disadvantaged neighbourhoods (46, 47). Similar data are not available at the national level in Australia, but a Victorian study identified substantially higher densities of packaged liquor outlets in the most disadvantaged neighbourhoods. In urban areas, the most disadvantaged neighbourhoods had around twice as many packaged liquor outlets per capita (and around 4.5 times as many per square kilometre) than the most advantaged neighbourhoods, with even starker differences in regional and rural areas (48).

## Potential regulatory approaches

This substantial evidence base suggests that liquor licensing policies in Australia should be concerned with the regulation of the packaged liquor market. However, this is a complex regulatory area, involving powerful stakeholders, an ambivalent public and the very real potential of unintended consequences. The current legislative and regulatory environments vary substantially across Australian jurisdictions, and further comparative research is necessary to identify the best approaches currently being implemented. In New South Wales, for example, detailed community impact assessments are required for new packaged liquor outlets (49). These assessments have been used by local governments to consider the potential negative effects of new outlets and, in some cases, to reject them. However, in most cases these rejections have been successfully appealed by the applicants, thus rendering the entire process largely symbolic (23). A similar series of unsuccessful objections by local governments in Victoria (for example, 21–22) suggests that the current balance between local input and overarching systems may be wrong (although see Chapter 5 for promising recent developments). This has been noted by the National Local Government Drug and Alcohol Advisory Committee, which has called for licensing and planning legislation to provide greater influence to local policy-makers (50).

The Western Australian example (discussed elsewhere in this volume) provides another example of a potential approach to regulating the packaged liquor market. A key consideration in licensing decisions in Western Australia is the potential community impact of the new licence, with the applicant having to demonstrate that the new outlet is in the public interest. This reverses the burden of proof as it is generally implemented in other jurisdictions, with local governments or health agencies required to conclusively prove why a proposed liquor outlet is not in the public interest. Recent successful objections to large liquor stores in Western Australia (51) suggest that this approach may provide some of the balance currently missing in other states.

A more straightforward approach that would build on existing policy agendas in a number of states would be to develop a more sophisticated form of risk-based licensing. This would need to incorporate a broader conception of risk than that currently considered (for example, risk of violence on the premises) and build in the risk of harm as it is distributed more broadly across the community. This might mean that packaged outlets in areas with high rates of alcohol-related harm are charged higher licensing fees, or that fees increase as the density of outlets increases to discourage high-density alcohol retail environments. Further, based on the findings of a recent study by Liang and Chikritzhs (43), differential fees could be charged based on turnover or sales, such that the outlets that sell the most alcohol pay the highest licensing fees (although this approach may have some legal impediments (52)). The setting of differential rates for alcohol outlets would combine a fee-based deterrent and local influence over the alcohol environment, although recent moves in Victoria suggest that this kind of approach will be resisted by state governments (53).

## Conclusions

This chapter has presented the growing evidence that the packaged liquor market in Australia is contributing substantially to alcohol-related harm and that there is a key role for liquor licensing regulation in limiting these harms. Much of the policy agenda is currently driven by highly visible problems such as night-time violence and heavy drinking by young people in public spaces, while the harms linked to packaged liquor are broader and more private (for example, chronic disease, domestic violence). Policy-makers, researchers and the media need to broaden the scope of the policy debate to incorporate these harms and to develop more robust liquor licensing controls for packaged liquor outlets in Australia.

There is currently a paucity of data available at the local level on the sale of alcohol in Australia. These data would provide critical resources for local governments and researchers when assessing the relative contributions of different types of liquor outlets to harm in the community. Recent work in Western Australia has demonstrated the usefulness of these data, highlighting the importance

of understanding not just how many outlets exist in local areas, but how much alcohol they sell (42). Further, standardised reporting of local-level rates of a broad range of alcohol-related harms would provide local governments and licensing agencies with critical resources in determining the appropriateness of approving new alcohol outlets in particular areas. Within local governments, greater collaboration between health, social and statutory planners would ensure that key issues relating to packaged liquor were considered across the planning and licensing processes and would enable consistent approaches by local governments and with higher likelihoods of success.

The impact of the expanding packaged liquor market is implicitly recognised in the ongoing debates about minimum pricing and alcohol taxation, and policy changes in these areas will primarily affect the packaged liquor market. Although pricing policies represent a centralised approach to limiting the impact of packaged liquor in the community, the evidence presented here suggests that licensing policies can also play an important role. The specific factors considered in making liquor licensing and planning decisions need to extend beyond a narrow approach, which focuses on acute harms that occur in and around specific outlets, to a broader understanding of the impact of liquor outlets at the local level. Thus, for example, existing data on community-level rates of domestic violence or chronic disease should be provided as key components of any social impact assessment, and the considerations of the cumulative impact of alcohol outlets should incorporate these kinds of outcomes.

## References

1. Robertson J. Police Commissioner lays down law over drunken violence. *Sydney Morning Herald*. 31 March 2013.
2. Cohen J, Michelmore K. Punch drunk. *Four Corners*. Sydney: ABC Television, 25 February 2013.
3. Balogh S. Kevin Rudd plans to curb alcohol-fuelled violence. *Courier Mail*. 6 November 2009.
4. McArthur G. Violence soars as light sales slump. *Herald Sun*. 9 January 2009.
5. Victorian Department of Health. *Reducing the alcohol and drug toll: Victoria's plan 2013–2017*. Melbourne: Victorian Department of Health, 2013.
6. Victorian Auditor-General. *Effectiveness of justice strategies in preventing and reducing alcohol-related harm*. Melbourne: Victorian Government, 2012. Accessed 12 February 2014 <[www.audit.vic.gov.au/reports\\_and\\_publications/latest\\_reports/2011-12/20120620-alcohol.aspx](http://www.audit.vic.gov.au/reports_and_publications/latest_reports/2011-12/20120620-alcohol.aspx)>.
7. Lancaster K, Hughes CE, Chalmers J, Ritter A. More than problem-solving: critical reflections on the 'problematism' of alcohol-related violence in Kings Cross. *Drug and Alcohol Review* 2012;31(7):925–7.
8. NSW Government Office of Liquor, Gaming and Racing. Lockouts and mandatory minimums to be introduced to tackle drug and alcohol violence. Media release. Sydney: OLGR, 21 January 2014. Accessed 22 January 2014 <[www.premier.nsw.gov.au/sites/default/files/LOCKOUTS%20&%20MANDATORY%20MINIMUMS%20TO%20BE%20INTRODUCED%20TO%20TACKLE%20DRUG%20AND%20ALCOHOL%20VIOLENCE.pdf](http://www.premier.nsw.gov.au/sites/default/files/LOCKOUTS%20&%20MANDATORY%20MINIMUMS%20TO%20BE%20INTRODUCED%20TO%20TACKLE%20DRUG%20AND%20ALCOHOL%20VIOLENCE.pdf)>.
9. Queensland Parliament Law, Justice and Safety Committee. *Inquiry into alcohol-related violence—final report*. Brisbane: Law, Justice and Safety Committee, Queensland Parliament, 2010.
10. Kypri K, Jones C, McElduff P, Barker D. Effects of restricting pub closing times on night-time assaults in an Australian city. *Addiction* 2011;106(2):303–10.
11. Begg S, Vos T, Barker B, Stevenson C, Stanley L, Lopez A. *The burden of disease and injury in Australia 2003*. Canberra: Australian Institute of Health and Welfare, 2007.
12. Laslett AM, Room R, Ferris J, Wilkinson C, Livingston M, Mugavin J. Surveying the range and magnitude of alcohol's harm to others in Australia. *Addiction* 2011;106(9):1603–11.

13. Miller P, Pennay A, Droste N, Jenkinson R, Chikritzhs T, Tomsen S et al. *Patron Offending and Intoxication in Night Time Entertainment Districts (POINTED): final report*. Geelong, Vic.: Deakin University for the National Drug Law Enforcement Research Fund, 2013. Accessed 22 March 2014 <[www.ndlerf.gov.au/pub/Monograph\\_46.pdf](http://www.ndlerf.gov.au/pub/Monograph_46.pdf)>.
14. Babor T, Caetano R, Casswell S, Edwards G, Giesbrecht N, Graham K et al. *Alcohol: no ordinary commodity: research and public policy*. 2nd edn. Oxford: Oxford University Press, 2010.
15. Hollander R. National Competition Policy, regulatory reform and Australian federalism. *Australian Journal of Public Administration* 2006;65(2):33–47.
16. Victorian Commission for Gambling and Liquor Regulation. Liquor licence application fees. 2013. Accessed 21 May 2013 <[www.vcglr.vic.gov.au/home/liquor/new+applicants/application+fees/](http://www.vcglr.vic.gov.au/home/liquor/new+applicants/application+fees/)>.
17. Government of South Australia Office of the Liquor and Gambling Commissioner. Annual liquor licence fees. 2013. Accessed 21 May 2013 <[www.olgc.sa.gov.au/default.asp?page=liquor.Annual\\_Licence\\_Fees.Annual\\_Licence\\_Fees.htm&menu=liquor](http://www.olgc.sa.gov.au/default.asp?page=liquor.Annual_Licence_Fees.Annual_Licence_Fees.htm&menu=liquor)>.
18. Victorian Civil and Administrative Tribunal. *Coles Group Property Developments Ltd v Mornington Peninsula SC*. Report no. P2438/2011. 25 February 2012.
19. Euromonitor International. *Passport: alcoholic drinks in Australia*. London: Euromonitor, 2012.
20. Euromonitor International. *Alcoholic drinks in Australia*. London: Euromonitor, 2008.
21. Sivasailam N. *Liquor retailing in Australia*. Melbourne: IBISWorld, 2011.
22. Victorian Civil and Administrative Tribunal. *Joshamie Nominees Pty v Director of Liquor Licensing*. Report no. B7/2009. 19 October 2009.
23. Victorian Civil and Administrative Tribunal. *Papas & Ors v Director of Liquor Licensing*. Report no. B28/2008. 12 September 2008.
24. Ellard G. Green light for liquor outlet, with conditions. *South Coast Register*. 15 October 2012.
25. Cronshaw D, Kelly M. Hunter Aldi alcohol sales approved. *Newcastle Herald*. 9 July 2012.
26. Mäkelä P. Whose drinking does the liberalization of alcohol policy increase? Change in alcohol consumption by the initial level in the Finnish panel survey in 1968 and 1969. *Addiction* 2002;97(6):701.
27. Ramstedt M. The repeal of medium-strength beer in grocery stores in Sweden—the impact on alcohol-related hospitalizations in different age groups. In: Room R, ed. *The effects of Nordic alcohol policies: what happens to drinking and harm when alcohol controls change?* Helsinki: Nordic Council for Alcohol and Drug Research, 2002, pp. 117–31.
28. Wagenaar AC, Langlely JD. Alcohol licensing system changes and alcohol consumption: introduction of wine into New Zealand grocery stores. *Addiction* 1995;90(6):773–83.
29. Kypri K, Bell ML, Hay GC, Baxter J. Alcohol outlet density and university student drinking: a national study. *Addiction* 2008;103(7):1131.
30. Scribner R, Mason K, Theall K, Simonsen N, Schneider SK, Towwim LG et al. The contextual role of alcohol outlet density in college drinking. *Journal of Studies on Alcohol and Drugs* 2008;69(1):112–20.
31. Weitzman ER, Folkman A, Folkman KL, Wechsler H. The relationship of alcohol outlet density to heavy and frequent drinking and drinking-related problems among college students at eight universities. *Health & Place* 2003;9(1):1–6.
32. Chaloupka FJ, Wechsler H. Binge drinking in college: the impact of price, availability and alcohol control policies. *Contemporary Economic Policy* 1996;14(4):112–24.
33. Livingston M, Laslett AM, Dietze P. Individual and community correlates of young people's high-risk drinking in Victoria, Australia. *Drug and Alcohol Dependence* 2008;98(3):241–8.

34. Gruenewald P, Remer L. Changes in outlet densities affect violence rates. *Alcoholism: Clinical and Experimental Research* 2006;30(7):1184–93.
35. Freisthler B, Weiss RE. Using Bayesian space–time models to understand the substance use environment and risk for being referred to child protective services. *Substance Use & Misuse* 2008;43(2):239–51.
36. Cunradi CB, Mair C, Ponicki W, Remer L. Alcohol outlets, neighborhood characteristics and intimate partner violence: ecological analysis of a California city. *Journal of Urban Health* 2011;88(2):191–200.
37. Gruenewald P, Johnson FW. Drinking, driving and crashing: a traffic-flow model of alcohol-related motor vehicle accidents. *Journal of Studies on Alcohol and Drugs* 2010;71(2):237–48.
38. Parker RN, Williams KR, McCaffree KJ. Alcohol availability and youth homicide in the 91 largest US cities, 1984–2006. *Drug and Alcohol Review* 2011;30(5):505–14.
39. Livingston M. A longitudinal analysis of alcohol outlet density and assault. *Alcoholism: Clinical and Experimental Research* 2008;32(6):1074–9.
40. Livingston M. A longitudinal analysis of alcohol outlet density and domestic violence. *Addiction* 2011;106(5):919–25.
41. Livingston M. Alcohol outlet density and harm: comparing the impacts on violence and chronic harms. *Drug and Alcohol Review* 2011;30(5):515–23.
42. Kavanagh A, Kelly M, Krnjacki L, Thornton L, Jolley D, Subramanian SV et al. Access to alcohol outlets and harmful alcohol consumption: a multi-level study in Melbourne, Australia. *Addiction* 2011;106(10):1772–9.
43. Liang W, Chikritzhs T. Revealing the link between licensed outlets and violence: counting venues versus measuring alcohol availability. *Drug and Alcohol Review* 2011;30(5):524–34.
44. Wicki M, Gmel G. Hospital admission rates for alcoholic intoxication after policy changes in the canton of Geneva, Switzerland. *Drug and Alcohol Dependence* 2011;118(2–3):209–15.
45. Stockwell T, Auld MC, Zhao J, Martin G. Does minimum pricing reduce alcohol consumption? The experience of a Canadian province. *Addiction* 2012;107(5):912–20.
46. Hay GC, Whigham PA, Kypri K, Langley JD. Neighbourhood deprivation and access to alcohol outlets: a national study. *Health & Place* 2009;15(4):1086–93.
47. Romley JA, Cohen D, Ringel J, Sturm R. Alcohol and environmental justice: the density of liquor stores and bars in urban neighborhoods in the United States. *Journal of Studies on Alcohol* 2007;68(1):48–55.
48. Livingston M. The social gradient of alcohol availability in Victoria, Australia. *Australian and New Zealand Journal of Public Health* 2012;36(1):41–7.
49. NSW Government Office of Liquor, Gaming and Racing. Community impact statement. Sydney: OLGR, 2013. Accessed 22 May 2013 <[www.olgr.nsw.gov.au/liquor\\_cis\\_home.asp](http://www.olgr.nsw.gov.au/liquor_cis_home.asp)>.
50. National Local Government Drug and Alcohol Advisory Committee. *Local government recommendations on liquor licensing: submission to the Ministerial Council on Drug Strategy*. Brisbane: NLGDAAC, 2008.
51. Atkinson J. One Dan Murphy's enough: commission. *The Shout*. 10 April 2013.
52. Hall WD, Chikritzhs TN, d'Abbs PH, Room RG. Alcohol sales data are essential for good public policies towards alcohol. *Medical Journal of Australia* 2008;189(4):188.
53. Victorian Department of Planning and Community Development. *Ministerial guidelines for differential rating*. Melbourne: Victorian Department of Planning and Community Development, 2013.





# Public health strategies

---



# Chapter 11

## Licensed venue design and harm minimisation: a neglected domain

Luke Hutchins, Amy Pennay and Alex Wijsmuller

Licensed premises or venues—such as bars, pubs, nightclubs and hotels<sup>1</sup>—function as public places for people to congregate and consume alcohol in a social setting. Australia has more than 50,000 operating licensed premises (1), each differing in terms of patronage, design and management. Research evidence shows that licensed venues are hotspots for aggressive and violent behaviour. For example, research has found that the most common location for violence in Canada is in licensed venues (2, 3), and more than 40 per cent of all assaults in Australia have been reported to occur in or around licensed premises (4). However, it is also widely accepted that a small proportion of venues are responsible for the vast majority of violence in licensed venues (3, 5). Homel and Clark (6), in their observational study of 45 venues in Sydney, found that 75.9 per cent of physical violence witnessed occurred in eight venues, with other studies showing similar findings (7, 8).

The question we address in this review is whether 'high-risk' venues share certain characteristics that make them more prone to alcohol-related violence. The 'production of violence' (6, 9) is likely to involve a complex interaction between many variables; for example, the physical environment, the type of patrons, their level of intoxication, management practices (such as the behaviour of bar staff and bouncers) and many other variables. However, it is the purpose of this chapter to focus on only one of these variables—the physical environment of licensed venues (that is, the design of the building and facilities inside and how this may influence patron behaviour). Hopefully, the conclusions of this study can be used to guide further research and direct the future design of licensed venues, as it has been argued that planners lack knowledge of crime and its environmental precipitators (10, 11).

### Method

A review of relevant literature was conducted by two authors. Various combinations of keywords were used in online databases to search for material. Key words included 'licensed venue' and 'licensed premises', 'design' and 'environment', as well as 'alcohol' and 'violence'. Peer-reviewed articles, academic books and government publications were the major sources of analysis, with the total number of sources exceeding 50.

One interview was conducted with a licensee and three architects were consulted. The three architects reported that they were not aware of any architectural guidelines for licensed venues and believed design factors were left to the discretion of venue owners. The licensee (who owns five venues in Melbourne) reported that venue owners are required to conform to regulations set by the Building Code of Australia, which outlines basic safety measures that apply uniformly to all venues (such as the maximum crowd allowed for a space of a certain size, number of toilets needed per 100

1 For the purpose of this review, cafes and restaurants are excluded from the discussion because their main function is not the service of alcohol.

people, number and size of doorways necessary for emergency evacuation procedures, etc.). The licensee reported that aside from complying with the building code, licensees were free to design venues as they chose and insurance companies were not concerned with design factors, aside from making sure building code requirements were adhered to.

## Key empirical studies

Fourteen key empirical studies were identified as major contributions to the evidence base on licensed venue design and alcohol-related harms. These studies are listed in the appendix.

Analysis of these documents revealed six key design-related themes that relate to alcohol-related harms: the 'permissiveness' of a venue, crowding and traffic flow, seating and eating, surveillance, lighting and environmental stimuli. The analysis also revealed three non-design-related themes for reducing alcohol-related harms: entertainment and games, other safety issues and alcohol consumption.

## Discussion

### Licensed venue 'permissiveness'

The licensed venue as a likely place for aggressive or violent behaviour may be partially explained by the unique place it occupies in society. As Cavan (12:67) argues, such venues 'permit a latitude of behaviour typically greater than that permitted in many other public settings' (see also 13). Essentially, licensed venues are viewed as places where patrons can have fun and 'let loose' in ways that would be less appropriate in other settings such as restaurants or the street. However, some venues permit greater freedom in patron behaviour than others, leading to more regular occurrences of aggression and violence. Venues have been found to have different levels of 'permissiveness' or, in other words, different allowances for patron behaviour. It has been argued that the physical environment of the venue communicates these permissible standards of patron behaviour in a number of ways.

Graham and Homel (14:172) suggest that 'the first clue the patron has as to what kinds of behaviour will be tolerated is the care and maintenance of the [venue]'. This argument has its roots in the prominent 'broken windows' theory of Kelling and Wilson (15), which emphasises how a dilapidated, unkempt environment is a more likely location for crime. Venues that have run-down, unclean interiors and exteriors can create a level of permissiveness, where some patrons feel it is acceptable to engage in anti-social behaviours such as vandalism, overt sexual activity, drug dealing, rowdiness and violence (3). Many studies, such as Graham et al. (16), have found that unclean and run-down venues are associated with a high number of aggressive incidents, and attribute these incidents to the creation of a permissive atmosphere. Indeed, Leather and Lawrence (17:404) found that a majority of university students interviewed in their study 'perceive[d] an untidy pub as a more violence-prone environment and, as a result, are more likely to legitimise aggressors'. Ensuring a venue does not become run-down or unclean is therefore a desirable aim to avoid a potential 'normalisation' of anti-social behaviour.

### Crowding and traffic flow

The design of a venue is important in determining its ability to house a large number of patrons safely at all times. A crowded venue means patrons will be in closer proximity to one another, and increases the chance for accidental physical contact and potentially aggressive behaviour to take place. For example, Roberts (18) found high levels of crowding to be a predictor of aggression, similar to Forsyth et al. (19), who identified a venue at full capacity as a predictor of violence. Macintyre and Homel (20) highlight how the experience of being in a crowded venue can cause stress, anxiety and frustration, but also note how many experienced nightclub goers have developed resilience to such an environment. Furthermore, it is important to note, as does Chikritzhs (21), that although crowding may be a negative in some situations (such as a queue for the toilet or bar), it is in many cases a positive from a patron perspective (such as on the dance floor).

The capacity of a venue is an important issue in relation to crowding. Violence is theoretically more likely to occur in a venue with greater patron numbers because, from a 'routine activity' perspective, there are more targets available to motivated offenders, and without an adequate amount of staff there is a lack of capable guardians (13). However, Macintyre and Homel (22:97) argue that a 'density increase = violence increase model is inadequate' because many nightclubs of similar size have similar patron limits but have differing levels of violence. This suggests that merely reducing the number of patrons allowed in, or increasing the size of a venue, may not entirely address the problem of excessive crowding.

Another major factor determining levels of crowding is the layout of a venue, specifically where key features are located in relation to each other, which influences how patrons move about the premises. Drawing on interviews with venue designers and operators, Koleczko and Hansen (23:17) reported that interviewees believed violence due to crowding was a result of 'inappropriate pedestrian flow patterns caused by poor location of entry and exit doors, dance floors, bars and rest rooms'. For example, if facilities are located in such a way that they create cross-flow between patrons wanting to order drinks, use the bathroom, access the dance floor or exit the venue, there is an increased chance of accidental physical contact and increased patron frustration. Roberts (18), Forsyth et al. (19), and Macintyre and Homel (22) have all identified in their studies such congestion as a facilitator for aggressive and violent behaviour.

An example of how the design of a venue can have a significant impact on traffic flows is illustrative: in Macintyre and Homel's study (22), one low-risk nightclub (which had a relatively low incidence of violence) had its entrance and exit on opposite sides of the venue. This allowed for unidirectional movement with no cross-flow, as opposed to some 'high-risk' nightclubs (having relatively high incidents of violence), which had entrances and exits located in the same place. Macintyre and Homel concluded that high-risk venues were poorly designed in comparison to low-risk venues because they facilitated excessive crowding and therefore more violence. However, it is important to note that all high-risk venues they studied met Australian building code regulations.

In terms of crowding and its link to aggression, Graham et al. (24) found that the most frequent locations for aggression in licensed venues were also the most crowded: the dance floor and surrounding space accounted for 31.5 per cent of all incidents. Places where patrons enter and leave venues have also been reported as prime locations for congestion and as common places for violence to break out (23). It is therefore important to ensure adequate space around the dance floor and to carefully position the entrance and exit points, and ensure that they are free from obstruction by any furniture or fixtures, as with any other major pathways through the venue (25). In addition, the importance of locating toilets away from major congestion areas has been highlighted (22, 25).

## Seating and eating

The importance of seating areas in venues has been highlighted as an important component in reducing alcohol-related harm. For example, Forsyth et al. (19) identified a high percentage of people standing as a moderate predictor of aggression and violence. Seating enables patrons to rest, which reduces frustration and fatigue. A report from the Victorian Department of Justice (25) emphasises this point and recommends creating relaxed seating areas or 'cool down' spaces in venues. Without such spaces, patrons can become frustrated and potentially vent such frustration through aggressive behaviour. A major source of frustration or agitation occurs when standing patrons bump into one another and spill drinks, prompting an altercation. Combining seating areas with the service of food is also desirable, as it creates an environment that is relaxed and not purely focused on the consumption of alcohol. In addition, experimental research has shown that eating while drinking slows the biological process of intoxication (26). Patrons who are less intoxicated and have access to areas to relax in are less likely to engage in behaviour that may be harmful to others.

## Surveillance

The design of a venue is particularly important in enhancing the surveillance of patrons by venue staff. In particular, it is important for venues not to have blind spots where patrons can engage in unwanted

behaviour (25, 27, 28). Enhancing lines of sight would suggest that venues that are open-planned are preferable to those with many separate rooms. However, MCM Research (29) found that violence was more frequent in open-plan and single-room designs than those with separate rooms. This may be due to violent or aggressive behaviour spreading easily in these open areas, as patrons are all together in one crowd, whereas in partitioned bars, if violence does occur, it is isolated to a particular area. Furthermore, it has been shown that venues with large open spaces intensify feelings of insecurity and discomfort (30), meaning it may be desirable for venue owners to avoid such designs. This creates a dilemma for designers and managers who need to balance the competing desires of maximising surveillance (which is difficult in partitioned bars) and preventing fights from spreading (29). To overcome these conflicting design elements, it has been widely suggested that venues use visually and audibly permeable screens (such as lattice walls, curtains etc.) to create separated areas that can be surveyed easily (25, 29).

The use of closed circuit television to prevent violence has been proposed (31), but has not yet been researched. Additionally, elevating the bar area for improved surveillance has also been suggested (5), which may also have the added effect of increasing perceived staff authority when purchasing drinks (28, 32). However, there have been no empirical studies into the effects of elevating the bar area.

## Lighting

The use of lighting in a venue is also important in enhancing surveillance, as well as contributing to the overall aesthetic and atmosphere of a venue. Balance is needed between bright lighting that might irritate patrons and very low lighting that might obscure patrons and their behaviours. Adequate lighting can be enough to deter certain behaviours, such as overt sexual liaisons, drug taking and rowdy behaviour, because patrons are aware they may be seen (5, 23). MCM Research (33) has also highlighted that adequately bright, neutral coloured lighting is required at the bar so that notes and coins can be determined easily to avoid disputes between patrons and staff. To address this need for diverse lighting in a venue, it has been suggested that dimmable lighting be available in venues, so specific areas can be dimmed to create a 'party' atmosphere and others brightened to enhance surveillance, especially in the case of an emergency (25, 28).

## Environmental stimuli

Research has shown that various physical stimuli—specifically temperature, noise, inadequate ventilation, excessive smoke and colours—can act as irritants and can cause frustration and increased aggression among people. Quigley et al. (34) found that high levels of noise and temperature 'showed predictive power above and beyond other variables' in their association with violence. The association between high noise levels and increased aggression has previously been well established (35–38). High temperature and its positive link to increased aggression has also been demonstrated (39, 40). A lack of adequate ventilation resulting in poor air quality in venues and its association with increased aggression and violence is also widely acknowledged (16, 41). High levels of smoke from cigarettes, although no longer an issue for enclosed spaces in the Australian context, have been shown to act as an irritant (6, 18). The relationship between crowding and these irritants has been acknowledged, as excessive crowding can produce high temperatures, noise and smoke (5). In terms of colour as a stimulus in licensed venues, MCM Research (29) provides the only inquiry into its effects as a possible cause of aggression. Although the colour red was shown to increase arousal levels, the six most violence-prone pubs in the study had no prominent red colours. MCM Research suggested that a balance in the colour and aesthetic complexity of a venue is needed so patrons are neither over- nor under-stimulated by their surroundings.

## Non-design issues

Non-design-related themes also arose repeatedly in the literature and are relevant to the issue of harm and anti-social behaviour in licensed venues.

## Entertainment and games

Keeping patrons entertained while at a venue is important to ensure their continued presence while preventing boredom or frustration. Live music, sports on television and competitive games like pool are all popular methods to entertain patrons (42, 43). However, such entertainment has the potential to incite disruptive behaviour by patrons. It has been suggested that music and television programs that are explicitly violent or sexual in nature can act as cues for disruptive behaviour by patrons (19, 44). In addition, live music or performances that are perceived as bad by patrons have the potential to lead to aggressive behaviour. Evidence for violence occurring where competitive games (most commonly, pool) are located does exist; MCM Research (29), Quigley et al. (34) and Hughes et al. (45) found that violence was more common in venues with pool tables. However, Graham et al. (24, 46) found that competitive games like pool were not strong predictors of aggression and violence. Despite these conflicting findings, recommendations to minimise the chance for conflict through competitive games have been provided. Gibbs (47) argues for limits on betting and protocols for behaviour around pool tables. In addition, the Victorian Department of Justice (25) endorsed the current practice in some venues of a pool cue exchange system, so cues are not readily available for use as weapons.

## Other safety issues

Reducing opportunities for physical injury is an important principle to follow when designing licensed venues. In some locations moves have been made to minimise the use of glass drinking vessels to reduce injuries from broken glass. Shepherd (48) began this trend by concluding from research that severe injuries in venues were commonly from broken glass, and suggested introducing tempered glass. However, Shepherd and Warburton (49) later found that toughened glassware actually increased injuries, suggesting a need for plastic or paper drinking vessels. A Victorian Department of Justice report (25) detailed several recommendations in line with this principle of injury minimisation, including installing ledges near walls to allow patrons to place empty drinks in a safe place (instead of on the floor) and avoiding backless stools and any sharp-edged furniture that could be used as weapons (25). Secured by Design (28) recommends outward-opening toilet cubicle doors to allow access to collapsed patrons. Discouraging the use of illegal drugs by minimising flat surfaces in bathrooms has also been suggested (25). In addition, a new innovation termed 'smart beer-mats' has been suggested, whereby patrons can discreetly test their drinks for types of sleep-inducing drugs by simply dabbing a bit of drink onto a coaster (30). Finally, the importance of availability of transport after a venue closes has also been emphasised, as it reduces the number of intoxicated patrons loitering on the street, arguments over taxis and in taxi queues, and the chance someone will drink and drive (5, 6).

## Alcohol consumption

Research into how the physical environment may promote or discourage excessive consumption of alcohol is surprisingly limited. Alcohol consumption has been found in some cases to increase as an indirect result of environmental factors, such as patrons buying cold drinks to cope with high temperatures (40, 50), as well as faster drinking to cope with discomfort caused by crowding and lack of seating (25, 42). Reporting on a study undertaken in 1943, Nicholls (51:187) reported that observational researchers found that 'standing drinkers finished a gill of beer [quarter of a pint] in an average of five minutes and thirty-four seconds, while seated drinkers took over thirteen minutes', illustrating the relationship between environmental factors and the faster consumption of alcohol.

Crowded venues can also have the opposite effect by reducing ease of buying drinks, and research in the United States and Canada has shown highly intoxicated patrons are more likely to be refused service in crowded venues (41); however, other factors relating to aggression are elevated in these situations, such as frustration. In relation to competitive games such as pool, Ratcliff and Nutter (52) found that patrons playing games drank more slowly but stayed in a venue longer than those who did not, and ultimately drank more than non-players. Considering the evidence supporting a link between alcohol and violence, the relative lack of focus on level and rate of alcohol consumption and environmental factors is surprising, and it is recommended that this gap be filled by further research.

## Research limitations

This discussion has identified how aspects of the physical environment can act as triggers for disruptive, aggressive and, in some cases, violent behaviour. Although the available research does present some evidence of an association between many environmental variables and increased aggression and/or violence, it faces a potential limitation in that it is unclear whether aspects of the environment cause aggressive behaviour or whether some environments attract individuals who are already aggressive. This possible limitation has been well acknowledged in the literature (14, 34). If such a limitation is true, the implication is that by reducing opportunities for violence in licensed venues, such violence may be displaced to other locations such as the street (20). This is not to suggest improving licensed venue design is not valuable, but highlights how efforts to improve design should take place alongside other initiatives in the community to reduce violence. Initiatives to improve venue management practices, staff training and policing of licensed venues do occur frequently both in Australia and internationally (for a comprehensive list of initiatives see 53).

## Conclusions

It is surprising how little evidence exists in architecture and planning literature on how to maximise safety (and even profit) and minimise harm in licensed venues. Perhaps there are informal guidelines that exist among architects and venue operators that are not available to the general community. As a consequence, the research drawn on here largely includes observational studies in licensed venues conducted by public health researchers.

Physical design is one of many alterable factors that can minimise or exacerbate alcohol-related harms within licensed venues. Non-design issues such as serving practices of bar staff, security staff behaviour and patron characteristics (including attitudes to violence and alcohol consumption) are also likely to play a role in reducing or exacerbating alcohol-related harm. It is difficult to separate these design and non-design variables when examining aggression and violence in the licensed venue setting (6), and therefore a holistic approach to harm minimisation in licensed premises is preferable because simply improving one variable is unable to guarantee a reduction of violence or injury.

Importantly, the physical design factors likely to increase aggressive behaviours—disorderly surroundings, crowding, poor traffic flow, lack of seating, lack of surveillance, low lighting, high temperature, loud noise and poor ventilation—are all features intrinsic to licensed venues. However, attempts to improve these factors are likely to result in some reduction in alcohol-related harm. When designing licensed venues, key goals to achieve should be:

- avoiding crowding (which leads to accidental physical contact and increased patron frustration) by ensuring the layout of a venue allows for adequate pedestrian flow and that facilities are located in such a way that there is minimal cross-flow between patrons entering and exiting the venue and accessing the bar, bathroom and dance floor
- ensuring venues adhere to capacity requirements
- identifying what constitutes permissible and non-permissible patron behaviour and designing accordingly to reflect these management expectations
- ensuring sufficient seating is available
- maximising staff opportunities for surveillance of patrons, through both venue design and lighting
- ensuring temperature, noise, air quality and venue aesthetics are regulated so patrons are not under- or over-stimulated.

Adequate evidence exists to guide these design changes and we suggest that the following conditions be adopted by local governments when considering new liquor licences or considering the renewal of licences.



1. In addition to building code requirements in relation to venue capacity and allowable patron numbers, licensees should be required to present their floor plans and detail how interior traffic flows will be arranged to minimise crowding, cross-flow and conflict.
2. During the planning process, issues relating to design of the entrance should be taken into account. For example, is there sufficient space at the entrance (both inside and outside) for patrons to queue and for staff to assess intoxication, and are there clear exit pathways to enable patrons to leave the venue safely?
3. During the licence application process, licensees should be required to outline how the design of the venue will ensure staff can adequately monitor patron behaviour through appropriate sight lines and how opportunities for surveillance will be maximised.
4. If there are entertainment or games areas in the venue, the licence application or renewal should specify the equipment that is being provided for games, how the space around the area will be designed to minimise sources of conflict, and the rules that will be put in place (and how they will be enforced) for using equipment and occupying this space.

## Appendix

Following is a list of empirical studies identified as major contributions to the evidence base on licensed venue design and alcohol-related harms. These studies are referenced throughout the document.

Forsyth, Cloonan and Barr (2005) conducted participant observation in eight pubs in Scotland, as well as interviews with bar staff (19).

Graham, Bernards, Osgood and Wells (2006, 2012) conducted 2668 hours of participant observation in 118 bars and clubs in Toronto, as part of an evaluation of the Safer Bars program (24, 54).

Graham, La Rocque, Yetman, Ross and Guistra (1980) conducted 633 hours of participant observation in 185 licensed venues in Vancouver (16).

Graham, West and Wells (2000) conducted participant observation of Canadian bars frequented by young adults over a period of 93 nights (46).

Homel and Clark (1994) conducted more than 300 hours of participant observation in 45 venues in Sydney (6).

Homel, Carvolth, Hauritz, McIlwain and Teague (2004) conducted participant observation in nightclubs located in Cairns, Townsville and Mackay, Queensland, both before and after a community intervention aimed at preventing harm (55).

Hughes, Bellis, Calafat, Juan, Schnitzer and Anderson (2008) conducted an anonymous survey of 3003 tourists leaving Spain (45).

Koleczko and Hansen (2011) conducted semi-structured interviews in Queensland with an interior designer, an architect and two managers of licensed premises (23).

Leather and Lawrence (1995) showed 96 students of the University of Nottingham photographs and vignettes about licensed venues and gathered their responses (17).

Macintyre and Homel (1997) conducted 72 hours of participant observation in six nightclubs located in Surfers Paradise, Queensland (22).

MCM Research (1990) conducted interviews with managers from 300 pubs in the United Kingdom (29).

Quigley, Leonard and Collins (2003) conducted interviews with 327 frequent bar patrons from New York (34).

Roberts (2007) conducted 444 hours of participant observation in 25 licensed premises in Hoboken, New Jersey (18).

Tomsen, Homel and Thommeny (1990) conducted observations of 16 licensed premises in Sydney over approximately 300 hours (42).

## References

1. Trifonoff A, Andrew R, Steenson T, Nicholas R, Roche A. *Liquor licensing legislation in Australia: part 1: an overview*. Adelaide: Flinders University, National Centre for Education and Training on Addiction (NCETA), 2011.
2. Pernanen K. *Alcohol in human violence*. New York: Guilford Press, 1991.
3. Haines B, Graham K. Violence prevention in licensed premises. In: Stockwell T, Gruenewald PJ, Toumbourou JW, Loxley W, eds. *Preventing harmful substance use: the evidence base for policy and practice*. London: John Wiley & Sons, 2005, pp. 163–76.
4. McIlwain G, Homel R. *Sustaining a reduction of alcohol-related harms in the licensed environment: a practical experiment to generate new evidence*. Brisbane: Griffith University, 2009.
5. Doherty SJ, Roche AM. *Alcohol and licensed premises: best practice in policing: a monograph for police and policy makers (NDLERF)*. Payneham, SA: Australasian Centre for Policing Research, 2003.
6. Homel R, Clark J. Prediction and prevention of violence in licensed premises. In: Clark RV, ed. *Crime prevention studies*. New York: Criminal Justice Press, 1994, pp. 1–46.
7. Briscoe S, Donnelly N. *Assaults on licensed premises in inner-urban areas*. Alcohol Studies Bulletin no. 2. Sydney: NSW Bureau of Crime Statistics and Research, 2001.
8. Considine R, Walker A, Wiggers J, Daly J, Hazell T, Fairhall S. Facilitating the responsible service of alcohol by hotels and clubs: strategies to reduce alcohol related harm in the Hunter—two collaborative approaches. Partnerships in Crime Prevention Conference, Hobart, 25–27 February 1998.
9. Wood JC. Locating violence: the spatial production and construction of physical aggression. In: Watson KD, ed. *Assaulting the past: violence and civilization in historical context*. Newcastle: Cambridge Scholars Publishing, 2007, pp. 20–37.
10. Cozens P, Greive S. Investigating crime precipitators and the ‘environmental backcloth’ of the night-time economy: an environmental criminology perspective from an Australian city. The Annual State of Australian Cities Conference; The University of Melbourne, 29 November – 2 December 2011.
11. Cozens P, Greive S. Designing crime precipitators in Northbridge after dark: urban governance in slumber. The Annual State of Australian Cities Conference: city growth, sustainability, vitality and vulnerability; University of Western Australia, Perth, 24–27 November 2009.
12. Cavan S. *Liquor license: an ethnography of bar behavior*. Chicago: Aldine Publishing Company, 1966.
13. Graham K, Homel R. *Raising the bar: preventing aggression in and around bars, clubs and pubs*. Devon: Willan Publishing, 2008.
14. Graham K, Homel R. Creating safer bars. In: Plant M, Single E, Stockwell T, eds. *Alcohol: minimising the harm*. London: Free Association Books, 1997, pp. 171–92.
15. Kelling GL, Wilson JQ. Broken windows: the police and neighborhood safety. *Atlantic Monthly* 1982;29(38).
16. Graham K, La Rocque L, Yetman R, Ross JT, Guistra E. Aggression and barroom environments. *Journal of Studies on Alcohol* 1980;41(3):277–92.

17. Leather P, Lawrence C. Perceiving pub violence: the symbolic influence of social and environmental factors. *British Journal of Social Psychology* 1995;34(4):395–407.
18. Roberts JC. Barroom aggression in Hoboken, New Jersey: don't blame the bouncers! *Journal of Drug Education* 2007;37(4):429–45.
19. Forsyth A, Cloonan M, Barr J. *Factors associated with alcohol-related problems within licensed premises: report to the Greater Glasgow NHS Board*. Glasgow: University of Glasgow, 2005.
20. Macintyre S, Homel R. *Paradise lost? A study of interior design, crowding and aggression in nightclubs*. Research and policy paper no. 6. Brisbane: Centre for Crime Policy and Public Safety, 1994.
21. Chikritzhs TN. *Australia: nightlife and crime: social order and governance in international perspective*. Oxford: Oxford University Press, 2009.
22. Macintyre S, Homel R. Danger on the dance floor: a study of interior design, crowding and aggression in nightclubs. In: Homel R, ed. *Policing for prevention: reducing crime, public intoxication and injury*. New York: Criminal Justice Press, 1997, pp. 91–113.
23. Koleczko K, Hansen VG. Dangers of the after-dark wonderlands: part B—a review of the impact of the physical environment design on nightclub violence. The First International Postgraduate Conference on Engineering, Designing and Developing the Built Environment for Sustainable Wellbeing, Brisbane, 27–29 April 2011.
24. Graham K, Bernards S, Osgood DW, Wells S. Hotspots for aggression in licensed drinking venues. *Drug and Alcohol Review* 2012;31(4):377–84.
25. Victorian Department of Justice. *Design guidelines for licensed venues*. Victoria: State Government of Victoria, 2009.
26. Wedel M, Pieters J, Pikaar N, Ockhuizen T. Application of a three-compartment model to a study of the effects of sex, alcohol dose and concentration, exercise and food consumption on the pharmacokinetics of ethanol in healthy volunteers. *Alcohol and Alcoholism* 1991;26(3):329–36.
27. Hadfield P. *Bar wars: contesting the nightclub in contemporary British cities*. Oxford: Oxford University Press, 2006.
28. Secured by Design. *Licensed premises*. London: Secured by Design, 2005.
29. MCM Research Limited. *Conflict and violence in pubs*. Oxford: MCM Research Ltd, 1990.
30. International Centre for Alcohol Policies. *Violence and licensed premises*. Washington: ICAP, 2002.
31. Arnold M, Laidler T. *Situational and environmental factors in alcohol-related violence*. Alcohol misuse and violence series no. 7. Canberra: Australian Government Publishing Service, 1994.
32. Deehan A. *Alcohol and crime: taking stock*. Crime reduction research series paper 3. London: Home Office, 1999.
33. MCM Research Limited. *Conflict and violence in pubs: design issues*. Oxford: MCM Research Ltd, 1992.
34. Quigley B, Leonard K, Collins R. Characteristics of violent bars and bar patrons. *Journal of Studies on Alcohol* 2003;64(6):765–72.
35. Donnerstein E, Wilson DW. Effects of noise and perceived control of ongoing and subsequent behaviour. *Journal of Personality and Social Psychology* 1976;34(5):774–81.
36. Geen RG. Effects of attack and uncontrollable noise on aggression. *Journal of Research on Personality* 1978;12(1):15–29.
37. Glass D, Singer J. *Urban stress: experiments on noise and social stressors*. New York: Academic Press, 1972.

38. Konecni VJ. The mediation of aggressive behavior: arousal level versus anger and cognitive labeling. *Journal of Personality and Social Psychology* 1975;32(4):706–12.
39. Anderson CA, Anderson KB. Temperature and aggression: paradox, controversy and a (fairly) clear picture. In: Geen RG, Donnerstein E, eds. *Human aggression: theories, research and implications for social policy*. San Diego: Academic Press, 1998, pp. 247–98.
40. Griffitt W, Veitch R. Hot and crowded: influences on population density and temperature on interpersonal behaviour. *Journal of Studies on Alcohol* 1971;17(1):92–9.
41. Hughes K, Quigg Z, Eckley L, Bellis M, Jones L, Calafat A et al. Environmental factors in drinking venues and alcohol-related harm: the evidence base for European intervention. *Addiction* 2011;106(1):37–46.
42. Tomsen S, Homel R, Thommeny J. The cause of public violence: situational ‘versus’ other factors in drinking related assaults. In: Chappell D, Grabosky P, Strang H, eds. *Australian violence: contemporary perspectives*. Canberra: Institute of Criminology, 1990, pp. 177–94.
43. Victorian Community Council Against Violence. *Inquiry into violence in and around licensed premises*. Victoria: Victorian Community Council Against Violence, 1990.
44. Graham K. They fight because we let them! Applying a situational crime prevention model to barroom violence. *Drug and Alcohol Review* 2009;28(2):103–9.
45. Hughes K, Bellis MA, Calafat A, Juan M, Schnitzer S, Anderson Z. Predictors of violence in young tourists: a comparative study of British, German and Spanish holidaymakers. *European Journal of Public Health* 2008;18(6):569–74.
46. Graham K, West P, Wells S. Evaluating theories of alcohol-related aggression using observations of young adults in bars. *Addiction* 2000;95(6):847–63.
47. Gibbs JJ. Alcohol consumption, cognition and context: examining tavern violence. In: Campbell A, Gibbs JJ, eds. *Violent transactions: the limits of personality*. New York: Basil Blackwell, 1986, pp. 133–51.
48. Shepherd J. Violent crime: the role of alcohol and new approaches to the prevention of injury. *Alcohol and Alcoholism* 1994;29(1):5–10.
49. Shepherd J, Warburton AL. Toughened glassware and injuries in bars. *Injury Prevention* 2000;6(3):239–40.
50. Baron RA, Bell PA. Aggression and heat: mediating effects of prior provocation and exposure to an aggressive model. *Journal of Personality and Social Psychology* 1975;31(5):825–32.
51. Nicholls J. *The politics of alcohol: a history of the drink question in England*. Manchester: Manchester University Press, 2009.
52. Ratcliff WD, Nutter RW. *Drinking in Edmonton taverns and lounges, final report to the Alberta Liquor Licensing Board*. Edmonton: AADAC Program Development Division, 1979.
53. Jones L, Atkinson A, Hughes K, Whelan G, Bellis MA. *Reducing harm in drinking environments: a systematic review of effective approaches*. Liverpool: Liverpool John Moores University, 2010.
54. Graham K, Bernards S, Osgood DW, Wells S. Bad nights or bad bars? Multi-level analysis of environmental predictors of aggression in late-night large-capacity bars and clubs. *Addiction* 2006;101(11):1569–80.
55. Homel R, Carvolth R, Hauritz M, McIlwain G, Teague R. Making licensed venues safer for patrons: what environmental factors should be the focus of interventions? *Drug and Alcohol Review* 2004;23(1):19–29.

# Chapter 12

## Entrances to licensed premises in Western Australia: an exploratory study of legislation, policy and practice

Paul Cozens and Shane Greive

The night-time economy (NTE) is considered a vital and positive contributor to the global competitiveness of the 21st century city (1–3). However, many western, post-industrial cities can no longer cope with alcohol-related crime within the environmental setting of entertainment districts (4).

Research on crime and anti-social behaviour in the NTE commonly focuses on offenders and alcohol-related offences (for example, Hughes and Thompson (5); Coakes Consulting (6)) or victims and alcohol-related harm/injuries (7, 8). Another focus is on situational crime prevention measures at the micro level, largely inside licensed premises (for example, Graham and Homel (9)). Few studies have investigated the specific environmental setting/situation of entrances to venues (for example, Hughes et al. (10)). This chapter reports on research that adopts a place-based approach from environmental criminology. Situational crime prevention is used to explore the specific environmental setting of entrances to licensed premises in Western Australia.

The first part of this chapter reviews the legislative and policy setting associated with entrances to licensed premises in Perth, including the relevant sections of the *Liquor Control Act 1988* (WA) and the *Security and Related Activities (Control) Act 1996* (WA). The second part focuses on how such legislation/policy plays out in practice from insights from observational surveys and interviews with a range of owners, managers, disk jockeys (DJs) and security staff working at licensed premises.

### The regulatory background

The *Liquor Control Act 1988* (WA) (the Act) regulates the production, sale, supply and consumption of liquor in Western Australia and the premises associated with this service. Primarily, the Act focuses on minimising alcohol-related harm caused to any person or group of people. It dictates where and when liquor can be supplied and consumed. A key secondary object is 'to facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State' (s. 5(2)(a)).

Under ss. 33 and 103A of the Act, mandatory training is imposed on licensees, approved managers, supervisory staff and bar staff in relation to the management of licensed premises and the responsible service of alcohol. In connection with this, there is a course on responsible practices in the sale, supply and service of liquor that deals with issues such as duty of care, harm minimisation, refusal of service, effects of alcohol, juveniles, identifying intoxication and conflict resolution (11). However, this is covered in the next chapter and is not the focus of this chapter.

Pertinent to this research, the mandatory course in the management of licensed premises includes legislative obligations and responsibilities of licensees and managers (11). These courses have to be conducted by an approved and accredited training provider (12). Under s. 100(2a) of the Act, an approved unrestricted manager (who has undertaken these courses) shall be present on site during operating hours. Training and licensing for crowd controllers is discussed below.

The Act requires licensees to show that they have developed venue documents for:

- a House Management Policy, which is a general statement of intent on how the licensee intends to operate as a business
- a Code of Conduct, which displays the licensee's commitment to controlling intoxicated persons and juveniles, resolving complaints from customers and residents, and minimising harm to patrons by encouraging the availability of food, non-alcoholic products, staff training and effective transport of patrons, and discouraging disorderly behaviour; it also involves a commitment to respect the neighbours and not to disturb the amenity of the local area, and a commitment to adopt the Director's guidelines on the responsible promotion/service of liquor (12)
- a Management Plan, which describes how the House Management Policy and the Code of Conduct are to be implemented. It should confirm that licensees/approved managers have successfully completed their training requirements. Further details should also be provided on compliance with mandatory industry training, the adoption of responsible server practices, the display of responsible service posters, the duties of licensed crowd controllers, practices adopted to control juveniles, and how intoxicated patrons are refused service. There should be procedures in place to respond to complaints and protect the amenity of the area (12).

It is a requirement that the House Management Policy and the Code of Conduct are displayed in a prominent position.

In addition to mandatory courses and the provision of a House Management Policy, Code of Conduct and Management Plan, the Act regulates entry to licensed premises. Before granting entry, a licensee has the right to require a patron to produce evidence of proof of age. This can be an Australian driver's licence, a current passport with a photograph or a Western Australian Proof of Age Card (12).

Part 3, Division 6, s. 64(3) of the Act states, 'the licensing authority may impose conditions which it considers to be in the public interest or which it considers desirable' in order to reduce noise, disturbance or annoyance in the vicinity of licensed premises, to ensure safety and to minimise harm. Conditions include controlling the kinds of liquor sold, drinking vessels, opening times, number of patrons, the provision/type of entertainment and the promotion of alcohol (a detailed review is outside the scope of this chapter).

Specifically, Part 4, Division 6, s. 115 relates to the environmental setting of the entrance to a licensed premise. Entry can be refused for a variety of reasons in addition to patrons being under the age of 18 or failing to provide evidence of proof of age.

Crucially, the licensee commits an offense in permitting drunkenness, violence/disorder or gambling, or a reputed thief, prostitute or drug dealer on the premises. Entry to licensed premises can be refused if a person appears to be drunk, is behaving offensively (or is known to be quarrelsome or disorderly), is believed to be unable/unwilling to pay or is begging. Admission can also be refused if a person does not conform to the licensee's dress code requirements. These requirements must be 'reasonable in the circumstances' and be displayed conspicuously at each entrance to the premises (s. 115(4a)(c)). In summary, the Act allows licensees to restrict entrance to venues in order to minimise harm and to reduce opportunities for crime.

Under the Act, some licences are required to have security and crowd control measures in place; this requirement can be imposed as a condition of the licence (13). Generally, this applies to a nightclub licence, a special facility licence (trading beyond 1 am) and an extended trading licence (trading beyond 1 am). Application of this to other categories of licence is determined on merit. Where necessary, the following conditions apply (13, 14):

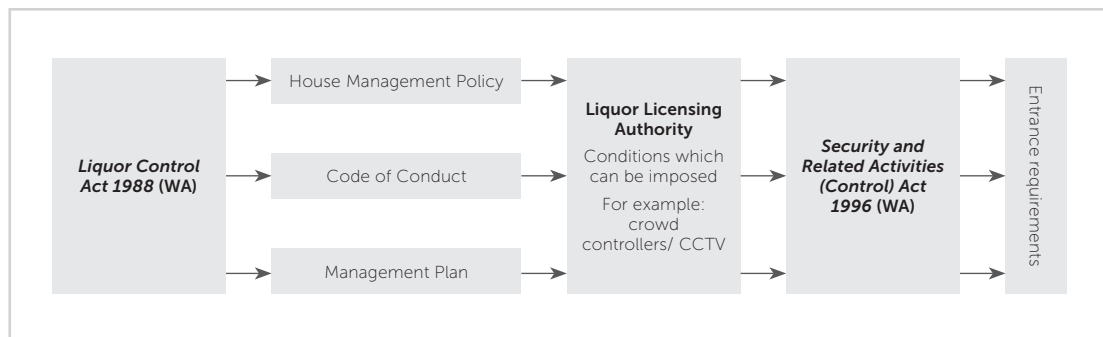
- two licensed crowd controllers are to be employed for the first 100 patrons; one crowd controller is required for each additional 100 patrons or part thereof
- crowd controllers are to monitor the licensed premises and the behaviour of patrons from 8 pm (or opening time if after 8 pm) until one hour after trading ceases

- closed circuit television (CCTV) is to record continuous images of the entrances to the premises, bars and entertainment/dance areas from 8 pm (or the opening time if after 8 pm) until one hour after trading ceases
- CCTV images must be retained for 14 days (or as specified by the Director of Liquor Licensing) and made available for viewing or removal by the police or other persons authorised by the Director
- a communication strategy must be developed to enable crowd controllers to clearly and effectively communicate with management during trading hours
- a register of all incidents must be maintained on the premises and the data kept for three years.

Division 10, s. 126C of the Act also refers to the requirement for crowd controllers to be licensed. Crowd controllers are regulated under the Security and Related Activities (Control) Act; Part 5, Division 1 states that a crowd control agent supplies the services of crowd controllers and must wear identification (ID) when supervising crowd control staff, and must keep an incident report register on the premises. A crowd controller at a licensed premises controls or monitors patron behaviour, screens those seeking entry and removes people for behavioural reasons. The crowd controller must be licensed as an employee of a crowd control agent and must be specifically authorised in writing by the licensee or manager to have the authority to remove a person from a licensed premises in accordance with s. 126C(2) of the Liquor Control Act. This must stipulate the day and times or period of time to which this authority applies. Furthermore, crowd controllers must display ID on their chests so it is clearly visible (14).

Figure 12.1 provides a simple illustration of the legislative/regulatory framework for managing entrances to licensed premises in Western Australia.

**Figure 12.1: The legislative framework for managing entrances to licensed premises**



## Entrance management practices

Clearly, there is extensive legislation and policy associated with the sale, supply and service of alcohol in licensed premises. There is also legal guidance on managing licensed premises. Given this strong regulatory approach, it is potentially illuminating to investigate and assess how such governance plays out in the real world. How does such legislation and policies work in practice? What is it like at the ‘coal face’ of the entrance to a licensed premise in Western Australia? The following section reports on observable management practices and inspects the environmental setting of a sample of entrances to licensed premises.

According to the Western Australian Police Commissioner, there are more than 4500 licensed premises in Western Australia (15) and 79 in the 0.6 square kilometre entertainment precinct of Northbridge (5). In central metropolitan Perth, there are around 200 licensed premises within the entertainment districts of Northbridge, Leederville, Subiaco and Mount Lawley. However, more than 70 per cent of these licensed premises are restaurants, cafes and function rooms. Furthermore, there

is a significant qualitative difference between the type and scale of the 60 or so licensed premises that are hotels, taverns, nightclubs or small bars (16).

This research is based on observational fieldwork conducted in 2012–13. It involved more than 100 hours of detailed observation in and around the four entertainment precincts. In particular, we explored the environmental setting of the entrances to the licensed premises using observational research, following Graham et al. (17). We collected data on entry requirements (including codes of conduct and signage), crowd controllers and CCTV. We also observed and inquired about the operational practices of a smaller sample of 12 of these licensed premises, including six venues identified in a previous study (6) as being the most crime-prone.

We interviewed a range of stakeholders with knowledge of activities in and around entrances to licensed premises. This included six owners, four managers, two ex-managers, five DJs and five security staff, some of whom had routine exposure to multiple venues. Below we report on two key areas pertinent to the governance of entrances to licensed premises: entry requirements and crowd controllers.

## Entry requirements

Entry requirements refer to dress codes, codes of conduct, conditions of entry and signage. Table 12.1 sets out a range of commonly used entry requirements across licensed premises in Perth.

**Table 12.1: Examples of entry requirements for licensed premises in Perth**

Identification-related	
'Proof of age identification (passport/driving licence, proof of age card) required'	'Proof of identity (passport/driving licence) required for all patrons'
Photo ID scanning in operation (of passport/driving licence, proof of age card)	Secondary forms of identification required (e.g. credit card or bank card)
Tests/detectors	
'You may be required to undergo a breathalyser test'	'You may be required to pass through a metal detector' (less common)
Restrictive dress codes	
'No shorts, thongs, sandals, work boots, steel toe-capped boots or skate shoes'	'No singlets, sleeveless shirts, sportswear, tracksuits, work-wear, or beach/surf-wear'
'No shirts showing soccer/sports teams or rock bands'	'No hoods, bandannas, hats or caps of any kind'
'No clothing or accessories indicating motorcycle gang membership'	'No torn or frayed denim'
'No gang, alcohol or sports insignia'	'No "rats tails" (type of ponytail)
'No "silly" haircuts' (less common)	
Other signage at entrances	
A range of codes of conduct/duty of care statements	Warnings of fines for the use of forged, false or counterfeit IDs
Warnings of fines for failing to vacate the premises	Warnings of barring notices for anti-social behaviour
'No smoking'	Notification of lockout times
Notification that re-entry to the club is not permitted for all patrons	Notification that re-entry to the club is not permitted for smokers
Statements on female and gay-friendliness	'Warning, this area is under video surveillance'
'Violent, disorderly and argumentative behaviour is not permitted at this venue'	



A key observation was that venues routinely use ID scanners to record the personal details of patrons of all ages. ID scanners are not used solely to check that patrons are aged 18 or over. Indeed, during the fieldwork, the authors were refused entry to venues on numerous occasions for failing to provide identification—even though both are more than 45 years old.

Among the venues surveyed, all were generally in line with the signage requirements as stipulated under the Act. It was not uncommon for these to be subject to inspection by liquor licensing officers or the police at any time. Accordingly, the venue managers took such inspections seriously and were generally well prepared with a prominent display of the required signage ready for the expected scrutiny. There was, however, considerable diversity in the content of the signage about entrance requirements, such as dress codes and codes of conduct. These are an expression of the implementation of the House Management Policy, the Code of Conduct and the Management Plan for each venue as required under the Act.

Not all venues apply a dress code. It is not a requirement under the regulations, but the larger venues tend to exhibit signage indicating strict dress codes, which are rigidly enforced as a condition of entry. From a management perspective, the dress code is part of defining a venue's image and market. The advantage of the signage is that it is easier for door staff to point to the sign rather than to argue when people are turned away.

We observed 'harder' venues with security measures, signage and strict entry requirements. We also observed 'softer' venues with less security and signage and more flexible entrance requirements. The general observation was that at the 'softer' end of the spectrum, several of the venues did not have dress code signage, or it was of a general nature (for example, 'a neat or smart and casual dress standard'). At the 'harder' end of the spectrum, the dress codes were very specific with regard to what they would not permit. This ranged from different types of hats to varying styles of dress and footwear. In several venues, we observed that patrons were refused entry for wearing hats, kilts and wigs, to name a few examples (Table 12.1).

The dress code can create tensions when people are refused entry and feel embarrassed at the door. It can be particularly tense when one or two members of a group are denied entry, leaving the others frustrated at what then becomes a problem for them all. Any sense of arbitrary enforcement of dress codes is also a potential prompt for conflict. For some managers, this concern underpinned their use of a detailed list of prohibited apparel, together with a 'no exceptions' policy. However, among the 'softer' venues, the need to be highly selective was an explanation for not having a dress code. The lack of a dress code facilitates flexibility and rational decision-making in relation to each patron seeking to gain entry.

The field observations also suggest that it is not uncommon for the dress code to come into effect at certain times and not at others. In other words, the enforcement of the dress code is time-specific. The dress code operates to manage peak crowd volumes and is relaxed during quieter times. Venues also sometimes relax the dress codes to cater for a particular crowd (for example, on a dedicated heavy metal night or for watching a sports event).

The House Management Policy and the Code of Conduct are required to be displayed in a prominent position on the licensed premises. Where this was presented as external signage, the statement tended to be of a general nature. More detailed house rules tended to be on a notice inside venues. 'Harder' venues tended to have more prominent signage with longer lists of unacceptable behaviour. 'Softer' venues tended to provide a general statement or a duty of care statement. Although codes of conduct are a formal requirement, they do not appear to be used by staff or patrons as a practical reference in the same way as the optional and generally more prominent dress code signage.

## Crowd controllers

According to our more experienced field contacts, the character of the crowd controllers among the venues surveyed has changed considerably over the past 10 years. The training, which is now mandatory, and the requirement for police clearances (criminal background checks) have done much to professionalise the industry. The midsize and smaller venues tend to rely on 'regular' security staff

provided on contract by a small number of registered security firms. The larger venues generally use their own dedicated security staff, but this body of core staff is often supplemented with contracted crowd controllers on busy nights.

The task of deciding who enters and who does not was recognised by management as being critically important to their operations. A door manager (often a female) with a critical and 'sensitive' eye was generally specifically selected for this role. It was commonly the door manager who directed the crowd controllers at the entrance, who generally talked with the patrons and who was usually the first point of contact for the police.

The ratio of security staff to patron numbers at each venue generally adhered to the regulations. This was regularly checked by the police and was facilitated by a patron count, which was maintained throughout the night. The uniformed crowd controllers were easy to identify and displayed their registered ID tags clearly and visibly, as required.

From our observations, the stereotypical hired 'muscleman' or the larger-framed, heavyweight image of a bouncer has been superseded by a less intimidating presence (18). Comparatively slim males, aged 25 to 35 years, from North Africa, central Asia and the Indian subcontinent, were a common profile among the contracted crowd controllers. There were few women crowd controllers. Crowd controllers appear more as a silent presence than an interactive role. For many, English is a second language, and they appear to be relatively new immigrants and culturally different from the crowds they control. They follow instructions rather than make judgments. More generally, there appeared to be little interaction or engagement between the crowd controllers and the patrons, and the relationship appeared detached. Although the interviewees did not define this in terms of 'hard' and 'soft', the experienced crowd controllers we spoke with indicated that they readily recognised the difference between crowds that were likely to generate trouble ('hard') and those that were friendly and posed little perceived risk ('soft').

One recurring point the crowd controllers raised was the unhelpful relationship with the police. The experienced crowd controllers we interviewed saw themselves as trained and legitimate security staff, but they did not feel that this was recognised by the police. Some felt that they were considered to be on the wrong side of the law. The police have direct contact with the door or security manager, and there is no expectation that the police will respond to assist the security staff. The most experienced security manager we spoke to, with more than 20 years of service, believed that the policing approach must change so that the security issues can be addressed constructively rather than with the disharmony that has long characterised the relationship.

Other special conditions required for specific venues relate to noise abatement issues and for crowd control measures to be applied in areas external to the venue. Observed examples included placing barricades on footpaths and crowd controllers patrolling or directing traffic away from adjacent streets. It is also noteworthy that in recent years planning approval for new residential developments located in entertainment precincts has become conditional on measures to mitigate complaints likely to be associated with the noise and crowds generated by adjacent licensed venues.

## Key findings

Within the regulatory framework, the management plans did seem to offer venues the necessary flexibility to adjust their security and management arrangements to suit the context and the character of the crowd. This was evident from the observable difference between venues in door management practices, including signage and conditions of entry requirements. There was also evidence to suggest that the same owners, managers and door staff would alter and adapt their entrance management practices based on the size and character of the crowd.

A major finding was that many venues have adopted practices and implemented security measures that exceed those required under the Act. Dress codes are one such example. The Act requires that

standards of dress are 'reasonable in the circumstances' and are 'conspicuously displayed'. Beyond the provisions of the Act, many venues use the enforcement of dress codes for arbitrary and potentially discriminatory decisions. There is a wide range of arguably discriminating features, and the rationale for each can be quite different. Such discrimination is an entrenched feature of the NTE. Refusing entry on the grounds of wearing a hat, for example, is arguably not 'reasonable in the circumstances' (although it could be considered as a disguise).

Another example of going beyond the Act is the use of ID scanning. The Act requires ID for proof of age (over 18). However, the purpose of these ID scanners extends much further than intended in the Act. Patrons of all ages are routinely denied entry for failing to present ID and for refusing to have their ID scanned, which is potentially a civil liberties issue. 'Over 25' age limit policies are explained on websites as being flexible to accommodate mature-acting younger patrons. The requirement for a patron to have a Western Australian driver's licence discriminates against international and interstate tourists, who have to bring their passports.

It can also be a business concern when ID scanners act to dissuade patrons from entering a licensed premises. Importantly, the use of ID scanners at venue entrances continues to increase rapidly, although there is no empirical evidence that they actually reduce crime, violence or anti-social behaviour (19). Evidence from Geelong (20) indicates that such measures can become the cultural norm, whereby virtually all nightclubs now use ID scanners.

There is also the potential that excessive security measures may result in disturbances and other crime by frustrating and provoking normally law-abiding patrons. This precipitation of crime (21) in the NTE has been discussed at length in two previous papers (16, 22). In summary, crime precipitators were identified at the macro, meso and micro scales of analysis of the Northbridge entertainment district (see Table 12.2 for some examples).

**Table 12.2: Examples of crime precipitators across multiple scales of analysis of Northbridge**

Scale	Examples
Macro-level precipitators	<p>Large drinking 'sheds' (23) characterised by large crowds and lack of other activities promote, permit and prompt excessive drinking.</p> <p>The public transport system deposits thousands of people into the entertainment district but closes down relatively early, leaving revellers stranded, frustrated and vulnerable. The area is effectively a 'capsule environment' (9) or a 'zone of entrapment' (16).</p> <p>Taxi ranks are few and are poorly located and designed, and two-hour waiting times frustrate potential passengers and provoke anti-social behaviour.</p>
Meso-level precipitators	<p>By 10 pm most food venues have closed, and the previously diverse crowd becomes dominated by a younger male cohort focused on alcohol. A small number of takeaway outlets service the late-night crowds and can become potential pressure points for irritated patrons. Itinerant food vendors are not permitted in the city.</p> <p>Licensed premises close in waves from 1 am (hotels), 2 am (taverns) and 3–6 am (nightclubs). Licensing regulations require rapid exit procedures, which result in the expelling of waves of 2000–4000 intoxicated young adults (mainly males) onto the streets at the same time. They compete for limited transport, food and toilet options. This stress/frustration can precipitate crime and is linked to increased levels of assault and anti-social behaviour (24)</p>
Micro-level precipitators	<p>'False queues' outside some venues are 'managed' to create the impression of exclusivity. This can create unnecessary crowding and potential conflicts (9).</p> <p>Many bars/clubs demand ID, some take photographs and others fingerprint patrons before entry is permitted. This can frustrate patrons and exclude many individuals, potentially precipitating crime inside and/or outside the venue.</p>

## Conclusions

The entrance statements inspected in this study were a purposeful display of requirements for entry. However, there were noticeably 'harder' and 'softer' approaches and images for venues. The 'soft' and 'hard' dichotomy has limitations for analytical purposes, but it served to highlight the deviations that some managers have made from the prescribed legislation and policies. Younger crowds, in particular, seem to be more tolerant of tougher security measures, or have become conditioned to accept them. Older patrons (25-plus) are less likely to accept or be prepared for such entrance requirements, and people were observed to read the signs and then turn away. Interestingly, in one venue there were two entrances to two different areas. The 'hard' entrance catered for a younger crowd, and the 'softer' entrance linked to a space that was more food-oriented and offered no spirits for sale. It attracted a more mature and friendly crowd. At an established openly gay friendly venue with a 'soft' crowd, ownership change has meant that although it remains a gay friendly mixed bar, it now has 'harder' fortifications than before, and has become less safe in the process.

The required minimum standards for entry were generally in effect. However, what we noticed most were the additional and often excessive measures adopted by some 'harder' licensed premises, reflected in the dress code, the type of music played and even the type of drinks sold. The evidence suggests that these tend to be thematically applied, depending on the type of patron and the type of venue. Without an understanding of marketing and the social engineering that this involves, centralist policies may undermine some of the positive effects of these strategies. Significantly, there was no sense from an earlier police study (5) that the police understood the diversity of venues and the variety of their associated risks.

Numerous venues expect trouble and attempt to 'harden' their image and their fortifications associated with entry requirements. Some venues do not expect trouble and adopt different measures to cultivate their 'softer' image. Overall, a larger proportion of venues tended to exceed, rather than to underplay, their regulated responsibilities under the Act.

The significance of these findings is that they underscore the advantage of a regulatory framework that facilitates context or place-appropriate management responses to harm minimisation. The wide array of management practices, from 'soft' to 'hard' (for example, demonstrated by entry requirements/crowd controllers), is to some extent a reflection of the significant diversity of licensed premises that exists.

Irrespective of a 'soft' or 'hard' approach, venue owners and managers appeared to be genuine and effective in their attempts to develop harm minimisation strategies, at least with respect to harm occurring on premises. The current regulatory framework is essentially a baseline for the management of licensed venues, which a premise enhances with its own House Management Policy, Code of Conduct and Management Plan. Such an approach, when it is working, means that the interface between different 'crowds' and licensed venues can be decoded and thematically groomed, rather than provoked, through place and context-sensitive security and management.

Our study is a snapshot of a small sample of licensed premises and there is certainly a need for a larger, more quantitative study to corroborate findings. However, this chapter highlights how the *Liquor Control Act 1988* (WA) and the *Security and Related Activities (Control) Act 1996* (WA) underpin a context-appropriate approach, which is differentiated according to the clientele attracted to a particular venue. The authors suggest that this flexibility is a powerful and necessary feature of the legislation, which is essential for the governance of the extensive diversity of licensed premises in Western Australia. A key recommendation that emerges from this research is that any future changes to the Act should not jeopardise this current diversity-enhancing flexibility. Future changes might also consider controlling the use of unnecessary and 'unreasonable' entry requirements, which have the potential to provoke and precipitate alcohol-related anti-social behaviour, violence and harm. This could be achieved by highlighting the fact that the legislation currently stipulates that entry requirements must be 'reasonable'. A 'one-size-fits-all' approach is inappropriate when it comes to regulating the diversity of the night-time economy. Minimum requirements, including a management plan that balances health, safety and security concerns with the principles of civil liberties and fairness, is more in keeping with the diversity of the venues and their diverse clientele.

## References

1. Hall P. Creative cities and economic development. *Urban Studies* 2000;37(4):639–49.
2. Hobbs D, Lister S, Hadfield P, Winlow S, Hall S. Receiving shadows: governance and liminality in the night-time economy. *British Journal of Sociology* 2000;51(4):701–17.
3. Chatterton P. Governing nightlife: profit, fun and (dis)order in the contemporary city. *Entertainment Law* 2002;1(2):23–49.
4. Schneider R, Kitchen T. *Planning for crime prevention: a transatlantic perspective*. London: Routledge, 2002.
5. Hughes V, Thompson B. *Is your house in order? Re-visiting liquor licensing practices and the establishment of an entertainment precinct in Northbridge*. Perth: Western Australia Police, 2009.
6. Coakes Consulting. *Analysis of ARIF data: prepared for Western Australia Nightclubs Association*. Perth, 2010.
7. Miller P, Tindall J, Sonderlund A, Groombridge D, Lecathelinais C, Gillham K et al. *Dealing with Alcohol and the Night-Time Economy (DANTE): final report*. Geelong, Vic.: Deakin University and Hunter New England Population Health for the National Drug Law Enforcement Research Fund, 2012. Accessed 11 March 2014 <[www.ndlerf.gov.au/pub/Monograph\\_43.pdf](http://www.ndlerf.gov.au/pub/Monograph_43.pdf)>.
8. Miller P, Pennay A, Droste N, Jenkinson R, Chikritzhs T, Tomsen S et al. *Patron Offending and Intoxication in Night Time Entertainment Districts (POINTED): final report*. Geelong, Vic.: Deakin University for the National Drug Law Enforcement Research Fund, 2013. Accessed 11 March 2014 <[www.ndlerf.gov.au/pub/Monograph\\_46.pdf](http://www.ndlerf.gov.au/pub/Monograph_46.pdf)>.
9. Graham K, Homel R. *Raising the bar: preventing aggression in and around bars, clubs and pubs*. Devon: Willan Publishing, 2008.
10. Hughes K, Quigg Z, Bellis M, Calafat A, van Hasselt N, Kosir M et al. Drunk and disorganised: relationships between bar characteristics and customer intoxication in European drinking environments. *International Journal of Environmental Research and Public Health* 2012;9(11):4068–82.
11. Government of Western Australia. *Policy—mandatory training*. East Perth: Department of Racing, Gaming and Liquor, 2013.
12. Government of Western Australia Department of Racing, Gaming and Liquor. *Liquor licensing—a guide to liquor licensing in Western Australia 2009/10*. Perth: Department of Racing, Gaming and Liquor, 2009.
13. Government of Western Australia. *Policy—security at licensed premises*. Perth: Department of Racing, Gaming and Liquor, 2002.
14. Clubs WA. *Course in liquor licensing 52065—learner guide and assessment booklet*. Perth: Clubs WA, 2010. Accessed 11 March 2014 <[www.clubswa.com.au/Data/Page/00000021/LLC-52065-learners-guide-140710-PDF-1.pdf](http://www.clubswa.com.au/Data/Page/00000021/LLC-52065-learners-guide-140710-PDF-1.pdf)>.
15. Cox N. WA alcohol laws ‘not effectively’ enforced or monitored. *PerthNow*. 23 March 2011. Accessed 22 October 2013 <[www.perthnow.com.au/news/western-australia/wa-alcohol-laws-not-effectively-enforced-or-monitored/story-e6frg14c-1226026885812](http://www.perthnow.com.au/news/western-australia/wa-alcohol-laws-not-effectively-enforced-or-monitored/story-e6frg14c-1226026885812)>.
16. Cozens P, Greive S. Investigating crime precipitators and the ‘environmental backcloth’ of the night-time economy: an environmental criminology perspective from an Australian city. The Annual State of Australian Cities Conference; The University of Melbourne, 29 November – 2 December 2011.

17. Graham K, La Rocque L, Yetman R, Ross JT, Guistra E. Aggression and barroom environments. *Journal of Studies on Alcohol* 1980;41(3):277–92.
18. Wilson-Chapman A. Perth security firm NPB Security is changing the face of bouncers. *PerthNow*. 17 August 2013. Accessed 14 January 2014 <[www.perthnow.com.au/news/western-australia/perth-security-firm-npb-security-is-changing-the-face-of-bouncers/story-fnhocxo3-1226698965899](http://www.perthnow.com.au/news/western-australia/perth-security-firm-npb-security-is-changing-the-face-of-bouncers/story-fnhocxo3-1226698965899)>.
19. Haggerty K, Tokar C. Signifying security: on the institutional appeals of nightclub ID scanning systems. *Space and Culture* 2012;15(2):124–34.
20. Palmer D, Warren I, Miller P. ID scanning, the media and the politics of urban surveillance in an Australian regional city. *Surveillance and Society* 2012;9(3):293–309.
21. Wortley R. Situational crime precipitators In: Wortley R, ed. *Environmental criminology and crime analysis*. Devon: Willan Publishing, 2008, pp. 48–69.
22. Cozens P, Greive S. Designing crime precipitators in Northbridge after dark: urban governance in slumber. The Annual State of Australian Cities Conference: city growth, sustainability, vitality and vulnerability; University of Western Australia, Perth, 24–27 November 2009.
23. Landry C. *The creative city*. London: Earthscan, 2007.
24. Bromley R, Nelson A. Alcohol-related crime and disorder across urban space and time: evidence from a British city. *Geoforum* 2002;33(2):239–54.

# Chapter 13

## Identifying intoxication: challenges and complexities

Amy Pennay

The relationship between drinking in licensed venues and increased risk of alcohol-related violence and injury is well established. For example, drinking at on-licence premises has been identified as a factor in three-quarters of aggressive and violent incidents in public (1) and two-thirds of alcohol-related injuries (2). Therefore, reducing the intoxication levels of patrons in and around licensed premises is likely to reduce the incidence of alcohol-related assault and injury at a population level.

In Australia, preventing intoxication at licensed venues relies on two main strategies: (a) liquor licensing legislation, which prohibits the sale of alcohol to intoxicated patrons, and (b) responsible service of alcohol (RSA) training, which educates servers about the legislation and the potential harms of intoxication. However, these strategies are clearly ineffective, with intoxication levels of young Australians in entertainment districts high on the weekends (3) and convictions for selling alcohol to intoxicated patrons making up a minority of liquor law breaches (4). Current strategies for reducing intoxication around licensed venues are ineffective for the most part because RSA policies are infrequently practised and legislation around intoxication is insufficiently enforced, despite evidence of the effectiveness and cost-effectiveness of these strategies when adequately practised and enforced (5).

This chapter briefly reviews Australian liquor licensing legislation in relation to serving alcohol to intoxicated patrons and research on the effectiveness of RSA. It then explores some of the challenges and complexities of identifying intoxication in licensed venues and the reasons why intoxication legislation and RSA practices are infrequently adhered to. The chapter concludes by discussing strategies for improving compliance with RSA.

### Liquor licensing legislation on intoxication

In Australia, each state and territory has liquor licensing legislation that includes a section about the illegality of serving alcohol to intoxicated patrons. The specifics of these laws are presented in the appendix (Table 13.A1), along with the legal definition of 'intoxication' or 'drunk', as specified in the legislation. A cursory glance at the table immediately highlights some of the challenges for licensees, serving staff and police in regards to interpreting these laws. In particular, there are problems with the variable use of words such as 'drunk' and 'intoxication', with a lack of clarity around the wording of the laws, and differences between jurisdictions in the evidence required to prove intoxication.

Taking Victoria as an example, the words 'state of intoxication', 'drunk' and 'disorderly' are all used in the description of the law, but only 'intoxication' is defined. In the definition of intoxication in Victoria, the law states that there must be 'reasonable grounds for believing that this is the result of the consumption of liquor', but no information is provided about what constitutes reasonable grounds. New South Wales and South Australian legislation, on the other hand, provides more information about the burden of proof that the licensee is required to meet when defending a conviction. Further, while Victoria, New South Wales, South Australia and the Australian Capital Territory all use 'intoxicated' as

their primary term for describing the state of the patron, Queensland uses the term 'unduly intoxicated', while Western Australia, Tasmania and the Northern Territory use the term 'drunk'. South Australia and Tasmania do not provide a definition of intoxication or drunk; however, in most states and territories both terms are defined in the same way—in terms of a person's speech, balance, coordination or behaviour being noticeably impaired and it being reasonable to assume this is from liquor. However, 'unduly intoxicated' is defined in the Queensland legislation as 'a state of being in which a person's mental and physical faculties are impaired because of consumption of liquor so as to diminish the person's ability to think and act in a way in which an ordinary prudent person in full possession of his or her faculties, and using reasonable care, would act under like circumstances'. This is very broad and could be interpreted in numerous ways—not to mention that one might wonder how a licensee is supposed to know how particular individuals usually act when not intoxicated from liquor.

Recent Australian research has identified that police experience difficulty in interpreting and enforcing these laws. Drawing on interviews with 60 Australian police officers, Trifonoff et al. (6) identified that dealing with intoxication, both conceptually and practically, is one of the most challenging issues for police. This is due to numerous factors: the inadequate and vague definitions of intoxication, the length of time it takes to adequately identify that a patron is intoxicated, the often insurmountable evidence needed to prove drunkenness in court (including the difficulty of proving that the patron was affected by alcohol and not another drug), the difficulty proving alcohol was consumed at that premises (and not at home beforehand), and having offences heard by magistrates with limited expertise in these matters. Further, the incentive for police to pursue these cases is diminished by the relatively small penalties that often result from these breaches. This is in addition to the problem that each state and territory differs in the ways in which they define intoxication, legislate intoxication-related offences and apply evidentiary burdens.

There are also likely to be other reasons (aside from concerns about the specificities of the legislation) that these laws are so infrequently and inconsistently enforced. For example, it has also been reported that police are overburdened by responsibilities that they consider more pressing than enforcing liquor licensing breaches, meaning that it is low on their priority list; and some police have reported that they feel an educational approach to licensees is more effective than enforcement (7).

Some police believe monitoring and enforcement of intoxication laws are best undertaken by specialised police (7). Another option is enforcement by civilian liquor licensing inspectors, which Australian jurisdictions generally also use to monitor whether licensed venues are conforming to the relevant Act. As with police, these inspectors are able to monitor whether licensees are adhering to the conditions of their licences, are displaying the appropriate paperwork, and are practising responsible service of alcohol through not serving alcohol to minors and intoxicated patrons. If licensees are found breaching any of these conditions, they are either given a warning or an infringement notice. A recent study that involved analysis of data from civilian liquor inspections, as well as interviews with inspectors and licensees in Victoria, concluded that although civilian inspectors had improved adherence to regulatory frameworks, breaches in relation to the sale of alcohol to intoxicated patrons remained insufficiently enforced (8), suggesting a need to rethink the duties and procedures of civilian licensing inspectors.

## Responsible service of alcohol

RSA programs are mandatory for staff working in licensed venues in every state and territory in Australia, except South Australia. RSA programs typically involve educating bar staff about the effects of alcohol, blood alcohol concentration (BAC), signs of intoxication, laws and regulations in relation to serving alcohol to intoxicated patrons, legal liability, strategies for dealing with intoxicated patrons and ways of refusing service to intoxicated patrons. However, even in states where RSA requirements are mandatory, there is evidence to suggest that not all licensed venue staff receive RSA training, and evidence to suggest that the length and depth of training varies by location and also between approved training organisations (7).

Recent research has identified that RSA is infrequently practised in licensed venues in Australia. Approximately 900 hours of observational research in licensed venues was undertaken by trained



fieldworkers in five Australian cities over a period of eight months (3). This study found that by 2 am the average proportion of patrons exhibiting signs of intoxication was 74 per cent, with 17 per cent of patrons judged by fieldworkers as appearing too intoxicated to remain in the venue at this time; however, 85 per cent of those judged as being too intoxicated to be in the venue continued to be served alcohol.

Such findings are common across countries and over time. In a Western Australian study from the mid-1990s that examined the serving practices of 23 licensed venues over 120 visits and 350 drink orders by trained actors posing as intoxicated customers, only 12 service refusals were made; there were also four 'soft' refusals, such as offering food or low- or no-alcoholic drinks (9). A Swedish study similarly found that actors pretending to be drunk were served in 87 of the 92 licensed premises they visited in Stockholm in 1996 (10). A more recent study undertaken in the Netherlands found that of the 58 visits by trained actors, six entry refusals were made by bouncers, one service refusal was made by a bartender and, on one occasion, the bartender served the patron a non-alcoholic beer (but did not tell the patron it was non-alcoholic). In this study, when asked later about the incident, 93 per cent of servers said they thought the patron was intoxicated (11), suggesting that identifying intoxication was not the primary reason for not practising RSA.

Although research demonstrates that compliance with RSA is poor, there is some evidence to suggest it has improved over time. For example, in the aforementioned Swedish study (10), only 5 per cent of attempts to purchase alcohol by intoxicated actors in 1996 resulted in a refusal, but following a community intervention program that involved widespread RSA training and alcohol policy work, this increased to 47 per cent in 1999 (12). The authors suggested that these results were likely to be the result of a combination of factors, including alcohol policy changes at the community level, RSA training and changes in the enforcement environment. A time-series analysis also showed a significant reduction in violent crimes in the district in which this community intervention program was initiated, compared with a control district (13).

Improvements over time in RSA practices are also evident in Australia; however, the effects are less sizeable. A telephone survey was undertaken with young adults from New South Wales in 2002, 2006 and 2011. Participants were asked about their drinking at licensed premises, how many visible signs of intoxication they displayed last time they attended a venue, and whether they experienced or observed any RSA practices. Participants reported experiencing an increase in RSA practices over time: 10.4 per cent of those reporting that they had displayed at least one visible sign of intoxication last time they attended a licensed venue received an RSA intervention in 2002, 15.4 per cent in 2006 and 18.9 per cent in 2011. Of those who reported displaying at least three visible signs of intoxication, 11.5 per cent received RSA interventions in 2002, 27.5 per cent in 2006 and 24.8 per cent in 2011. In particular, of those displaying any signs of intoxication, refusal of alcohol service increased linearly over the three time periods, as did suggestions from staff members that patrons switch to low- or non-alcoholic drinks or purchase food. Of those displaying three or more signs of intoxication, requests for patrons to leave the premises increased linearly over the ten-year time period. There was also an increase in the number of RSA interventions observed by non-intoxicated customers over the three time periods (4, 14, 15).

It is difficult to tell from the aforementioned research whether improvements in RSA were the result of RSA training or other policy, community or environmental changes. Research has generally demonstrated that RSA programs improve knowledge and attitudes of bar staff; however, the extent to which such programs influence serving practices and reduce alcohol-related harm is less clear. In reviewing the evidence on RSA, Babor et al. (16) concluded that RSA programs have been shown to decrease servers' engagement in bad serving practices (such as refilling half-empty glasses) and increase 'soft' interventions such as slowing service or promoting food and water; however, there is no strong evidence that it increases refusal of service to intoxicated patrons. A Cochrane review of 20 studies of server interventions implemented in licensed venues concluded that there is no reliable evidence that server interventions are effective in reducing alcohol-related harms because compliance with interventions appears to be a problem (17). The main issue with RSA is that it is infrequently and inconsistently enforced. In their review, Babor et al. (16) argue that there is stronger evidence of the effectiveness of RSA laws when enforcement is increased. There is good evidence that bar staff refuse service more often when enforcement has increased and also evidence that alcohol-related injuries decrease in populations when enforcement of RSA laws is increased.

## Barriers to RSA

A recent study that involved online surveys with 141 alcohol servers in Western Australia identified a number of reasons why RSA practices are not always adhered to. Some of these include broader environmental and social factors, such as the social acceptability of intoxication in Australia and the belief that licensed venues are places where intoxication occurs, is permitted and is inevitable. More specific reasons that RSA is sometimes not practised are because:

- staff are often young and drink heavily themselves, and so identify with patrons (and do not want to ruin other people's fun)
- staff have personal relationships with patrons
- the threat of enforcement is low
- staff receive inadequate training in identification of intoxication
- staff fear confrontation and want to avoid conflict
- economic issues prevail (such as managerial pressure to generate profit and concerns about loss of gratuities).

There are also issues specific to the drinker, such as an ability to mask intoxication or purchase drinks with the help of other patrons. As with police, serving staff have also identified that the wording and requirements of alcohol laws are confusing and intoxication is subjectively perceived (7).

This research found that servers were most likely to refuse service to patrons when they exhibited negative behaviours such as aggression, violence, rudeness, abuse or harassment or became threatening. The second most commonly reported reason for refusing service was if patrons exhibited behaviour such as slurring words, loss of balance and drowsiness. The third most commonly reported reason for refusing service was fear of breaching laws and receiving fines. Importantly, factors that influenced servers' likelihood of adhering to RSA included supervisor modelling, the venue's specific culture and the threat of enforcement. It was noted by some participants that supervisors often bent the rules for friends, locals, regulars and attractive patrons, and these practices were then followed by staff (7).

A final barrier that has been identified to both adherence of RSA and enforcement of intoxication legislation is that police are required to prove that intoxication is the consequence of the consumption of liquor and that the liquor was sold at the venue. The issue of pre-drinking—that is, drinking in a private space prior to attending the venue—adds an extra layer of complexity to the enforcement of these laws: patrons may enter a venue before the signs of intoxication from alcohol they have consumed in a private space become apparent, and only one or two drinks at a licensed venue can be enough for the signs to become more visible. Interviews with 6800 patrons in night-time entertainment districts across Australia found that two-thirds reported pre-drinking before attending a venue, making this a very real problem for both licensees and police in adhering to RSA and enforcing these laws (3). Further, this same research, which also involved observational data gathered in licensed venues by trained fieldworkers, identified that by 2 am, 22 per cent of nightclub patrons exhibited signs of illicit drug use. Given fairly high levels of drug use in some licensed venues, licensees can potentially use the argument when defending a conviction for serving an intoxicated patron that the patron's behaviour was the result of drug use, not alcohol consumption.

## Challenges of identifying intoxication

One primary criticism that has been levelled at RSA and liquor licensing legislation is the difficulty in accurately identifying intoxication. As per the Victorian and New South Wales liquor legislation (Table 13.A1 in the appendix), state governments are required to issue guidelines containing information about how to determine whether a person is in a state of intoxication. As with the liquor licensing legislation, the guidelines (Table 13.A2 in the appendix) differ from state to state. In addition, while some signs of intoxication are clearly likely to be related to over-consumption of alcohol, such as

'spilling drinks and the inability to find one's mouth with the glass', others, such as 'exuberance', 'not hearing or understanding what is being said' and even being 'offensive' may not in any way be related to the over-consumption of alcohol. As such, it has been noted by the Ministerial Council on Drug Strategy that there is no consistent or formally agreed upon definition of intoxication (18). This is true both in Australia and elsewhere, and essentially means that assessing intoxication is a complex interpretive exercise (19).

The complex nature of interpreting intoxication, defined in the Australian state guidelines in terms of behavioural checklists, has been supported by a substantial body of empirical work. An emergency room study that involved measuring the BAC of 4798 patients across 12 countries and matching it with clinician assessments of the severity of intoxication found that raw agreement between the two measures was 86 per cent, but lower among those who had reported drinking in the six hours prior to injury (39 per cent raw agreement). The authors concluded that clinical assessment of intoxication was moderately concordant with levels of BAC, but much of that agreement was among patients who had not been drinking at all. Among those who had been drinking, there was much less correlation between BAC level and clinical judgment of intoxication (20).

These findings are concordant with other research. For example, using fieldworkers to assess intoxication, McGuire (21) reported that 93 per cent of those judged as sober had a BAC of 0 but only 20.1 per cent of those with a BAC over 0.1 were judged as intoxicated. A United Kingdom study (22) that involved the subjective analysis of intoxication by trained surveyors found that they were mostly able to identify individuals with a BAC of 0.15 or higher through observing signs such as staggering gait, glazed eyes and slurred speech. However, women displayed these behaviours at a lower BAC than men and surveyors were much less accurate at lower BAC levels. In a review of the international literature, Rubenzer (23) concluded that there is no evidence that police officers, bar staff, mental health workers or alcohol clinicians can accurately assess intoxication at low to moderate levels, and even extensive experience serving drinkers does not substantially improve skills in this regard.

It has been argued that numerous factors might influence judgment of intoxication, including:

- the extent of experience of the person making the assessment
- the opportunity, time and circumstances in which the individual can be observed
- the extent of the patron's tolerance of alcohol
- cross-cultural variations in intoxicated behaviour
- culturally influenced assumptions about intoxication and sobriety of the person making the assessment (20, 24).

Further, accurately identifying these signs of intoxication may be difficult in crowded licensed venues where lighting is poor and noise levels are high, and where bar staff have very brief encounters with patrons (25).

The research literature thus suggests that the current Australian approach of using behavioural guidelines to identify intoxication is difficult to make workable, except perhaps at very high levels of intoxication.

## **An alternative approach: defining intoxication by BAC?**

The difficulty of enforcing a definition of intoxication in the alcohol sales environment based on behavioural guidelines is highly reminiscent of the position of drink-driving legislation in the 1930s. At that time, drink-driving prohibitions were stated in terms of 'driving while intoxicated', and apprehensions and convictions were few. The situation was transformed by the transition to defining drink-driving prohibitions in terms of a BAC level. The shift was backed up by the development of measurement tools for BAC and by experimental and epidemiological studies of the strong relationship between crash and injury risk to the driver's BAC (26).

In response to the challenges inherent in identifying intoxication, setting a maximum BAC level for legal service of alcohol to patrons would offer a greater level of certainty that a patron could indeed be deemed intoxicated. The question is whether this would be justified by the research literature on the relationship between BAC and harm. The epidemiological literature shows clearly that alcohol consumption in the event is related to the whole range of injuries, and apparently slightly more related to non-motor-vehicle injuries, particularly intentional injuries (27). The experimental literature also shows a relationship between alcohol dose and aggressive behaviour, with one study (28) showing elevated risk of aggression at a BAC of 0.11 per cent. However, it is unclear from this study whether aggression would have continued to rise at higher BACs given that ethical constraints in experimental research prohibit doses of alcohol that exceed a BAC of around 0.1 per cent. It is also important to note that there are some experimental studies where the relationship between alcohol and aggression has been less clear (see 28 for a review).

In an interesting policy development, the New South Wales Government introduced a suite of new laws in January 2014 in an attempt to curb alcohol-related violence in the night-time economy, including the presumption of intoxication at a BAC level of 0.15 per cent (29). It is unclear how this threshold was determined and whether there is appropriate justification for setting intoxication at this level; however, the forthcoming legal arguments stemming from this law might advance Australia's approach to identifying or defining intoxication in the coming years.

In the meantime, before setting a maximum BAC level for legal service of alcohol to patrons is considered, more research is needed to determine the appropriate BAC threshold. In addition, research into the viability of such measures and their effectiveness in reducing alcohol-related harm is also required.

## The way forward

This chapter has identified some of the challenges and complexities of identifying intoxication and enforcing RSA legislation, but this is not to say that there are not steps that can be taken to improve the way RSA is implemented and the sale of alcohol to intoxicated patrons is enforced.

First, it is important to note that focusing on servers and licensees is a worthwhile approach to reducing alcohol-related harms in and around licensed venues, rather than punishing individual patrons. There is some evidence to suggest that police and licensing inspectors focus more on the behaviour of patrons and not licensees (25), and there is compelling evidence that punishing the 'bad apples' is unlikely to be an effective approach to reducing alcohol-related harms (16).

Recently, Graham et al. (5) have argued that there are important lessons we can draw from random breath testing that could be applied to the enforcement of liquor legislation in relation to serving intoxicated patrons. Random breath testing has been extremely effective in reducing drink-driving, and Graham et al. argue that there are five key reasons for this:

- a clear, measurable and accepted definition of the violation exists
- perceived risk of enforcement is high
- enforcement is unbiased
- the consequences of enforcement are clear, and (perhaps most importantly)
- there is strong political will for the law and its consequences.

Graham et al. argue that current intoxication laws must be more widely publicised and regularly enforced, including random checks from police or licensing inspectors, particularly focused on high-risk licences. Penalties must be significant enough to act as a deterrent; for example, not just monetary fines, but risk to the licence (5). Finally, political will and the availability of resources are necessary for these laws to be more regularly and efficiently enforced; however, at present, this is lacking, which is one of the key challenges in this area (5). Stockwell (30) suggests that the support

of local community groups around deterring the serving of alcohol to intoxicated patrons cannot be underestimated. A range of things can be done to generate or maintain a groundswell of support for this issue, such as having alcohol advocacy groups generate and maintain publicity about the issue, ensuring researchers feed data into local and state governments and to licensees (one avenue for the sharing and discussion of such data could be at liquor licensing accord or alcohol management plan meetings), and generating media coverage and campaigns about the issue.

## Conclusions

This chapter outlines some of the challenges inherent in identifying intoxication, and some of the limitations of RSA and the laws that are designed to prevent the sale of alcohol to intoxicated patrons. These challenges notwithstanding, steps can be taken to improve adherence to RSA in Australia.

The strategy with the best evidence base for increasing adherence to RSA, and one that is also likely to be cost-effective, is to increase enforcement of these laws either through specialised police or civilian liquor inspectors who are willing to spend time in licensed venues at peak times (such as Sunday mornings at 3 am) and who are prepared to enforce breaches of these laws in high-risk venues. It is widely regarded that in studies of alcohol policy, enforcement—or at least a genuine threat of enforcement—is just as important in the success of a law (understood in terms of a reduction in alcohol-related harm) as the law itself (16). As noted by Stockwell (30), in some jurisdictions the introduction of mandatory RSA training has resulted in population decreases in alcohol-related harm, indicating it is an important component of a holistic approach, but RSA training must be combined with a targeted enforcement program and general deterrence generated through strict penalties for licensees, as well as ongoing publicity about the laws and their application. It is important that penalties for violating RSA laws are not only perceived to be real, but the penalties significant, reflecting the magnitude of the breach of the duty of care to the customer on the part of the licensee.

Another important step, which may require more time and resources, is to ensure that RSA training requirements, the definition of intoxication, liquor licensing legislation and evidentiary burdens are made consistent across the nation so that licensees, bar staff, police and liquor inspectors cannot use the excuse that they are confused by the specificities of these laws. Exploring the way in which serving alcohol to customers who have engaged in pre-drinking or appear intoxicated by drugs other than alcohol might be legislated is also worthy of further research, in order to reduce the obstacle of licensees using these as reasons for not adhering to RSA when defending convictions.

Other strategies that might be useful in increasing adherence to RSA include building the importance of supervisor modelling into RSA training, and the development of positive harm-reduction programs that reward licensed premises and their staff for reducing alcohol-related harm through incentives and disincentives (7).

In the meantime, researchers have an important role to play in assisting the development of consistencies around RSA training, around defining intoxication in enforceable terms and, more generally, around liquor licensing legislation and evidentiary burdens, including:

- further developing the evidence on the relationship between BAC and harms from alcohol
- evaluating the cost-effectiveness of increased enforcement of RSA
- designing and evaluating programs that reward licensed premises and their staff for reducing alcohol-related harm through incentives and disincentives (5, 7)
- evaluating the feasibility and effectiveness of breathalysing patrons in the alcohol sales environment.

## Appendix

**Table 13.A1: Australian state and territory laws pertaining to serving ‘intoxicated’ or ‘drunk’ patrons and legal definition of ‘intoxication’ or ‘drunk’**

State	Law	Definition of intoxication or drunk
Victoria:	A licensee or permittee: (a) must not supply liquor to a person who is in a state of intoxication; (b) must not permit drunken or disorderly persons to be on the licensed premises or on any authorised premises (s. 108(4)).	For the purposes of this Act, a person is in a state of intoxication if his or her speech, balance, co-ordination or behaviour is noticeably affected and there are reasonable grounds for believing that this is the result of the consumption of liquor. The Commission must issue guidelines containing information about how to determine whether a person is in a state of intoxication for the purposes of this Act (s. 3AB).
New South Wales:	A licensee must not permit: (a) intoxication, or (b) any indecent, violent or quarrelsome conduct, on the licensed premises. A licensee or an employee or agent of a licensee must not, on the licensed premises, sell or supply liquor to an intoxicated person. If an intoxicated person is on licensed premises, the licensee is taken to have permitted intoxication on the licensed premises unless the licensee proves: (a) that the licensee, and the licensee’s employees or agents, took the steps set out [below] or all other reasonable steps to prevent intoxication on the licensed premises, or that the intoxicated person did not consume alcohol on the licensed premises. The following are the relevant steps: (a) asked the intoxicated person to leave the premises, (b) contacted, or attempted to contact, a police officer for assistance in removing the person from the premises, (c) refused to serve the person any alcohol after becoming aware that the person was intoxicated (s. 73).	For the purposes of this Act, a person is ‘intoxicated’ if: (a) the person’s speech, balance, co-ordination or behaviour is noticeably affected, and (b) it is reasonable in the circumstances to believe that the affected speech, balance, co-ordination or behaviour is the result of the consumption of liquor. The Director-General is to issue guidelines to assist in determining whether or not a person is intoxicated for the purposes of this Act (s. 5).
South Australia:	Liquor not to be sold or supplied to intoxicated persons if: (a) liquor is sold or supplied on licensed premises to an intoxicated person; or (b) liquor is sold or supplied on licensed premises to a person in circumstances in which the person’s speech, balance, coordination or behaviour is noticeably impaired and it is reasonable to believe that the impairment is the result of the consumption of liquor.  If the defendant is the person by whom the liquor was sold or supplied, [the defendant must prove]: (a) that the defendant believed on reasonable grounds that the person to whom it was sold or supplied was not intoxicated; or (b) that the defendant believed on reasonable grounds that the impairment of the speech, balance, coordination or behaviour of the person to whom it was sold or supplied was not the result of the consumption of liquor; or (c) if the defendant is the licensee or responsible person for the licensed premises and did not personally sell or supply the liquor, that the defendant exercised proper care to prevent the sale or supply of liquor (s. 108).	None provided.

State	Law	Definition of intoxication or drunk
Australian Capital Territory: <i>Liquor Act 2010</i>	A person commits an offence if the person is a licensee or permit-holder; and the person or an employee of the licensee or permit-holder supplies liquor to another person; the other person is intoxicated; and the supply happens at the licensed premises (s. 105).	For this Act, a person is intoxicated if: (a) the person's speech, balance, coordination or behaviour is noticeably affected; and (b) it is reasonable in the circumstances to believe that the affected speech, balance, coordination or behaviour is the result of the consumption of liquor (s. 104).
Queensland: <i>Liquor Act 1992</i>	A person must not, on premises to which a licence or permit relates: (a) supply liquor to; or (b) permit or allow liquor to be supplied to; or (c) allow liquor to be consumed by a person who is a minor or is unduly intoxicated or disorderly (s. 156).	Unduly intoxicated is defined as: a state of being in which a person's mental and physical faculties are impaired because of consumption of liquor so as to diminish the person's ability to think and act in a way in which an ordinary prudent person in full possession of his or her faculties, and using reasonable care, would act under like circumstances (s. 4).
Western Australia: <i>Liquor Control Act 1988</i>	A person shall not, on licensed premises or regulated premises: (a) sell or supply liquor, or cause or permit liquor to be sold or supplied, to a drunk person; (b) allow or permit a drunk person to consume liquor; or (c) obtain or attempt to obtain liquor for consumption by a drunk person; or (d) aid a drunk person in obtaining or consuming liquor.  Where a licensee, whether personally or by an employee or agent: (a) permits drunkenness, or (b) violent, quarrelsome, disorderly or indecent behaviour to take place on the licensed premises; that licensee, and the employee or agent concerned, commits an offence (s. 115).	A person is 'drunk' for the purposes of this Act if: (a) the person is on licensed premises or regulated premises; and (b) the person's speech, balance, coordination or behaviour appears to be noticeably impaired; and (c) it is reasonable in the circumstances to believe that that impairment results from the consumption of liquor. If an authorised officer or a person on whom a duty is imposed under section 115 decides, in accordance with subsection (1), that a person is drunk at a particular time, then, in the absence of proof to the contrary, that person is to be taken to be drunk at that time (s. 3A).
Tasmania: <i>Liquor Licensing Act 1990</i>	A person must not sell liquor to a person who appears to be drunk. A licensee is guilty of an offence if a person authorised by the licensee to sell liquor on the licensed premises sells liquor to a person who appears to be drunk (s. 78).	None provided.
Northern Territory: <i>Liquor Act (2007)</i>	A licensee or an employee of a licensee must not sell or otherwise supply liquor to a person who is drunk (s. 102).	A person is drunk if: (a) the person's speech, balance, coordination or behaviour appears to be noticeably impaired; and (b) it is reasonable in the circumstances to believe the impairment results from the person's consumption of liquor (s. 7).

**Table 13.A2: Guidelines for identifying intoxication**

Victoria and Western Australia (31, 32)			
Noticeable changes in behaviour	Noticeable loss of coordination and other physical signs	Noticeable decrease in alertness	
<ul style="list-style-type: none"> <li>• Becoming loud, boisterous and disorderly</li> <li>• Becoming argumentative</li> <li>• Annoying other patrons and staff</li> <li>• Becoming incoherent, slurring or making mistakes in speech</li> <li>• Becoming physically violent</li> <li>• Becoming bad tempered or aggressive</li> <li>• Using offensive language</li> <li>• Exhibiting inappropriate sexual behaviour</li> </ul>	<ul style="list-style-type: none"> <li>• Spilling drinks</li> <li>• Fumbling and difficulty in picking up change</li> <li>• Swaying and staggering</li> <li>• Difficulty walking straight</li> <li>• Bumping into furniture and other customers</li> <li>• Glassy eyes and lack of focus</li> <li>• Falling down</li> <li>• Vomiting</li> </ul>	<ul style="list-style-type: none"> <li>• Rambling conversation</li> <li>• Loss of train of thought</li> <li>• Difficulty in paying attention</li> <li>• Not hearing or understanding what is being said</li> <li>• Drowsiness, dozing or sleeping while sitting at a bar or table</li> </ul>	
New South Wales, South Australia and Australian Capital Territory (33–35)			
Speech	Balance	Coordination	Behaviour
<ul style="list-style-type: none"> <li>• Slurring words</li> <li>• Rambling or unintelligible conversation</li> <li>• Incoherent or muddled speech</li> <li>• Loss of train of thought</li> <li>• Not understanding normal conversation</li> <li>• Difficulty in paying attention</li> </ul>	<ul style="list-style-type: none"> <li>• Unsteady on feet</li> <li>• Swaying uncontrollably</li> <li>• Staggering</li> <li>• Difficulty walking straight</li> <li>• Cannot stand or falling down</li> <li>• Stumbling</li> <li>• Bumping into or knocking over furniture or people</li> </ul>	<ul style="list-style-type: none"> <li>• Lack of coordination</li> <li>• Spilling of drinks</li> <li>• Dropping drinks</li> <li>• Fumbling change</li> <li>• Difficulty counting money or paying</li> <li>• Difficulty opening or closing doors</li> <li>• Inability to find one's mouth with a glass</li> </ul>	<ul style="list-style-type: none"> <li>• Rude</li> <li>• Aggressive</li> <li>• Belligerent</li> <li>• Argumentative</li> <li>• Offensive</li> <li>• Bad tempered</li> <li>• Physically violent</li> <li>• Loud/boisterous</li> <li>• Disorderly</li> <li>• Confused</li> <li>• Exuberant</li> <li>• Using offensive language</li> <li>• Annoying/pestering others</li> <li>• Overly friendly</li> <li>• Loss of inhibition</li> <li>• Inappropriate sexual advances</li> <li>• Drowsiness or sleeping at a bar or table</li> <li>• Vomiting</li> <li>• Drinking rapidly</li> </ul>



## Northern Territory (36)

- Spilling drinks and the inability to find one's mouth with the glass
- Rambling conversation, loss of train of thought
- Annoying other customers and employees
- Swaying and/or dozing while sitting at bar or table
- Becoming loud, boisterous and making comments about others
- Crude behaviour
- Clumsy, uncoordinated
- Aggressive or belligerent
- Inappropriate sexual advances
- Change in gait, stumbling
- Becoming agitated or argumentative
- Becoming careless with money, buying rounds for strangers
- Difficulty moving around objects, bumping into or knocking over furniture
- Making irrational or nonsensical statements
- Inability to light a cigarette
- Falling down
- Glassy eyes, lack of eye focus, loss of eye contact
- Letting cigarette burn in ashtray without smoking it
- Altered speech patterns, such as slurred speech
- Inability to pick up change from table/bar

Note: no guidelines for Queensland and Tasmania could be identified

## References

1. Buss T, Abdu R, Walker JR. Alcohol, drugs, and urban violence in a small city trauma center. *Journal of Substance Abuse and Treatment* 1995;12(2):75–83.
2. Humphrey G, Casswell S, Yeo Han D. Alcohol and injury among attendees at a New Zealand emergency department. *New Zealand Medical Journal* 2003;116(1168):1–10.
3. Miller P, Pennay A, Droste N, Jenkinson R, Chikritzhs T, Tomsen S et al. *Patron Offending and Intoxication in Night Time Entertainment Districts (POINTED): final report*. Geelong, Vic.: Deakin University for the National Drug Law Enforcement Research Fund, 2013.
4. Briscoe S, Donnelly N. *Liquor licensing enforcement activity in New South Wales*. Alcohol Studies Bulletin no. 4. Sydney: NSW Bureau of Crime Statistics and Research, 2003.
5. Graham K, Miller P, Chikritzhs T, Bellis M, Clapp J, Hughes K et al. Reducing intoxication among bar patrons: some lessons from prevention of drinking and driving. *Addiction* 2013; doi: 10.1111/add.12247.
6. Trifonoff A, Andrew R, Steenson T, Nicholas R, Roche A. *Liquor licensing legislation in Australia: part 3: police expectations and experiences*. Adelaide: Flinders University, National Centre for Education and Training on Addiction (NCETA), 2011.
7. Costello D, Robertson AJ, Ashe M. *Drink or drunk: why do staff at licensed premises continue to serve patrons to intoxication despite current laws and interventions? Final report*. Canberra: National Drug Law Enforcement Research Fund, 2011.

8. Wilkinson C, MacLean S. Enforcement of liquor licence provisions: the introduction of civilian licence inspectors in Victoria. *Drugs: Education, Prevention and Policy* 2013;20(1):15–21.
9. Rydon P, Stockwell T, Lang E, Beel A. Pseudo-drunk-patron evaluation of bar-staff compliance with Western Australian liquor law. *Australian and New Zealand Journal of Public Health* 1996;20(3):290–5.
10. Andréasson G, Lindewald B, Rehnman C. Over-serving patrons in licensed premises in Stockholm. *Addiction* 2000;95(3):359–64.
11. Gosselt J, Van Hoof J, Goverde M, De Jong M. One more beer? Serving alcohol to pseudo-intoxicated guests in bars. *Alcoholism: Clinical and Experimental Research* 2013;37(7):1213–9.
12. Wallin E, Gripenberg J, Andréasson S. Too drunk for a beer? A study of overserving in Stockholm. *Addiction* 2002;97(7):901–7.
13. Wallin E, Norström T, Andréasson S. Alcohol prevention targeting licensed premises: a study of effects on violence. *Journal of Studies on Alcohol* 2003;64(2):270–7.
14. Scott L, Donnelly N, Poynton S, Weatherburn D. *Young adults' experience of responsible service practice in NSW: an update*. Sydney: NSW Bureau of Crime Statistics and Research, 2007.
15. Donnelly N. *Young adults' experience of responsible service of alcohol in NSW: 2011 update*. Sydney: NSW Bureau of Crime Statistics and Research, 2012.
16. Babor T, Caetano R, Casswell S, Edwards G, Giesbrecht N, Graham K et al. *Alcohol: no ordinary commodity: research and public policy*. 2nd edn. Oxford: Oxford University Press, 2010.
17. Ker K, Chinnock P. Interventions in the alcohol server setting for preventing injuries. *Cochrane Database of Systematic Reviews* 2008(3):art. no.: CD005244; doi: 10.1002/14651858.CD005244.pub3.
18. Australian Government Ministerial Council on Drug Strategy. *National alcohol strategy: 2006–2009*. Canberra: Ministerial Council on Drug Strategy, 2006.
19. MacLean S, Pennay A, Callinan S. *The relationship between blood alcohol content and harm for non-drivers: a systematic review*. Melbourne: Turning Point Alcohol and Drug Centre, 2012.
20. Cherpitel CJ, Bond J, Ye Y, Room R, Poznyak V, Rehm J et al. Clinical assessment compared with breathalyser readings in the emergency room: concordance of ICD-10 Y90 and Y91 codes. *Emergency Medicine Journal* 2005;22(10):689–95.
21. McGuire FL. The accuracy of estimating the sobriety of drinking drivers. *Journal of Safety Research* 1986;17(2):81–5.
22. Perham N, Moore SC, Shepherd J, Cusens B. Identifying drunkenness in the night-time economy. *Addiction* 2007;102(3):377–80.
23. Rubenzer S. Judging intoxication. *Behavioral Sciences & the Law* 2011;29(1):116–37.
24. Room R. The relation between blood alcohol content and clinically assessed intoxication: lessons from applying the ICD-10 Y90 and Y91 codes in the emergency room. In: Cherpitel CJ, Borges G, Giesbrecht N, Hungerford D, Peden M, Poznyak V et al., eds. *Alcohol and injuries: emergency department studies in an international perspective*. Geneva: Departments of Mental Health and Substance Abuse & of Injuries and Violence Prevention, World Health Organization, 2009, pp. 135–46.
25. Trifonoff A, Andrew R, Steenson T, Nicholas R, Roche A. *Liquor licensing legislation in Australia: part 1: an overview*. Adelaide: Flinders University, National Centre for Education and Training on Addiction (NCETA), 2011.

26. Elder RW, Shults RA, Sleet DA, Nichols JL, Zaza S, Thompson RS. Effectiveness of sobriety checkpoints for reducing alcohol-involved crashes. *Traffic Injury Prevention* 2002;3(4):266–74.
27. Taylor B, Irving HM, Kanteres F, Room R, Borges G, Cherpitel C et al. The more you drink, the harder you fall: a systematic review and meta-analysis of how acute alcohol consumption and injury or collision risk increase together. *Drug and Alcohol Dependence* 2010;110(1–2):108–16.
28. Duke AA, Giancola PR, Morris DH, Holt J, Gunn RL. Alcohol dose and aggression: another reason why drinking more is a bad idea. *Journal of Studies on Alcohol and Drugs* 2011;72(1):34–43.
29. Patty A, Nicholls S. One-punch laws: intoxication to be defined based on high-range drink-driving levels. *Sydney Morning Herald*. 31 January 2014. Accessed 12 March 2014 <[www.smh.com.au/nsw/onepunch-laws-intoxication-to-be-defined-based-on-on-highrange-drinkdriving-levels-20140130-31phz.html](http://www.smh.com.au/nsw/onepunch-laws-intoxication-to-be-defined-based-on-on-highrange-drinkdriving-levels-20140130-31phz.html)>.
30. Stockwell T. Responsible alcohol service: lessons from evaluations of server training and policing initiatives. *Drug and Alcohol Review* 2001;20(3):257–65.
31. Victorian Commission for Gambling and Liquor Regulation. *Liquor licensing fact sheet: intoxication guidelines*. Melbourne: Victorian Commission for Gambling and Liquor Regulation, 2012. Accessed 24 October 2013 <[www.vcglr.vic.gov.au/resources/013e425a-b64b-42ea-bf8b-cccc2e85f74a/vcglrintoxicationguidelinescolour3pplowres.pdf](http://www.vcglr.vic.gov.au/resources/013e425a-b64b-42ea-bf8b-cccc2e85f74a/vcglrintoxicationguidelinescolour3pplowres.pdf)>.
32. Government of Western Australia Department of Racing, Gaming and Liquor. *Identifying the signs of intoxication*. Perth: Department of Racing, Gaming and Liquor, 2010. Accessed 8 May 2014 <[www.rgl.wa.gov.au/ResourceFiles/Policies/Identifying\\_the\\_Signs\\_of\\_Intoxication.pdf](http://www.rgl.wa.gov.au/ResourceFiles/Policies/Identifying_the_Signs_of_Intoxication.pdf)>.
33. NSW Government Office of Liquor, Gaming & Racing. *Intoxication guidelines*. Sydney: NSW Government Office of Liquor, Gaming & Racing, 2013. Accessed 12 March 2014 <[www.olgr.nsw.gov.au/pdfs/intox\\_guidelines.pdf](http://www.olgr.nsw.gov.au/pdfs/intox_guidelines.pdf)>.
34. Government of South Australia Consumer and Business Services. *Intoxication guidelines in plain English*. Adelaide: Attorney-General's Department, 2013. Accessed 12 March 2014 <[www.olgc.sa.gov.au/liquor/responsible\\_liquor/Intoxication\\_Guidelines\\_Full.pdf](http://www.olgc.sa.gov.au/liquor/responsible_liquor/Intoxication_Guidelines_Full.pdf)>.
35. ACT Parliamentary Counsel. *Liquor (intoxication) guidelines*. Canberra: ACT Parliamentary Counsel, 2010. Accessed 12 March 2014 <[www.legislation.act.gov.au/ni/2010-652/current/pdf/2010-652.pdf](http://www.legislation.act.gov.au/ni/2010-652/current/pdf/2010-652.pdf)>.
36. Northern Territory Government Department of Business. Guide to identifying intoxication. Darwin: Northern Territory Government, 2013. Accessed 12 March 2014 <[www.dob.nt.gov.au/gambling-licensing/business/security-licensing/Pages/identifying-intoxication.aspx](http://www.dob.nt.gov.au/gambling-licensing/business/security-licensing/Pages/identifying-intoxication.aspx)>.

# Chapter 14

## Limits on trading hours, particularly late-night trading

Elizabeth Manton, Robin Room and Michael Livingston

A key component of liquor licensing is the specification of allowable days and hours of sale. In almost all jurisdictions that operate a regulatory liquor licensing system, businesses selling alcohol have some restrictions on when they are allowed to trade. Trading hours have been a key concern of licensing agencies in Australia, from the implementation and removal of mandated 6 pm closing of pubs, to restrictions on Sunday trading and, more recently, expansion of late-night trading hours. This chapter examines the history of trading hours regulation in Australia and the evidence that restricting or expanding the permitted hours of trade affects rates of alcohol-related problems. In particular, we focus on the emergence of late-night trading and on the potential for regulation in this area to reduce alcohol-related harm. The chapter summarises the existing legislation relating to trading hours across Australian jurisdictions, briefly discusses the ongoing policy debates, and outlines the Australian and international research evidence.

### The background: the long retreat from temperance-era restrictions

Limits on hours and days of sale of alcoholic beverages have been an issue in Australian alcohol policy for well over a century, although the terms of the debate have changed over time. Under longstanding Australian tradition, hotels, with rooms for guests, were licensed to serve alcohol to the public; that is, they functioned as pubs (1:3–6). Until the 1960s, it was taken for granted that pubs would not be open on Sundays, under Sunday Observance Acts, which applied to commerce more generally. But by the 1970s, the number of exceptions to the general rule had multiplied: exceptions had long existed for 'bona-fide travellers' and resident guests staying at the pub, and by 1978 New South Wales had extended exceptions to licensed clubs, restaurants, airport terminals, and trains and planes, and to hotels with permits to serve alcohol 'ancillary' to a meal (2). The trend of whittling away special Sunday restrictions on sales has continued. But, as can be seen in Table 14.A1 in the appendix, which summarises the current trading hours provisions in Australian jurisdictions, the 'ordinary trading hours' on Sundays for hotels (pubs) are still shorter than for other days in four states, although often they can be extended through 'extended hours' provisions.

Opening hours for pubs on other days of the week also became an issue of contention at the height of temperance sentiment in Australia in the early 20th century. 'Early closing' movements had pressed for limits on opening hours of shops in general in the latter half of the 19th century, resulting in Early Closing Acts, which were passed around the turn of the century. Taking its cue from this, the temperance movement began agitating for the same hours to be applied to hotels (3:174). In the context of the First World War, closing hours of 6 pm for pubs were imposed by popular vote in South Australia, New South Wales, Victoria and Tasmania, and remained until 1955 in New South Wales, 1966 in Victoria and 1967 in South Australia (4). Six o'clock closing and the resulting 'six-o'clock swill',

as workers drank what they could in the hour after the conventional end of the work day, became emblematic of what Australian politicians sought to distance themselves from in the long societal reaction against temperance (4).

From the 1950s on, many more alternatives to the traditional pub were licensed to sell alcohol: sports and other clubs, restaurants, bottle shops and eventually the large discount shops for which the generic terms has become 'liquor barns'. Earlier in the 20th century most drinking in Australia was on-premises, in a pub or club, but in the latter part of the century the proportion of drinking at home or in another person's home or outdoors greatly increased (4). Now almost 80 per cent of alcohol is purchased in the bottle, can or cask from an off-premises outlet. Ownership of premises licensed to sell alcohol also became more concentrated, so that now about 59 per cent of all packaged liquor is sold from premises owned by the two dominant supermarket chains (5).

## The current situation: licensing hours by jurisdiction

Australian jurisdictions differ in the variety of licences for different types of alcohol outlet. The main types on which this chapter focuses are (1) on-premises hotels (the traditional pub licence, which can also include the right to off-premises sales); (2) other on-premises venues, such as bars, restaurants and nightclubs; and (3) off-premises sales. The different licences often have different 'ordinary trading hours', which are summarised as of December 2013 in Table 14.A1 (see p.130) and presented visually in Table 14.1. Some states have an on-premises licence, which covers restaurants, nightclubs and bars, whereas in other states such an all-encompassing licence does not exist. For those states, the trading hours for the separate on-premises licence types are shown. Off-premises licences are sometimes known as packaged liquor, takeaway, bottle shop or retail liquor licences, but they have the same scope in each state, whatever term is used. What they have in common is that liquor purchased there may not be consumed on the premises. There are other types of retail liquor licences that are not covered in this chapter (for example, club licences and producers' licences). Each state or territory has exceptions to trading hours on special days (for example, Good Friday, Easter, Christmas Day, New Year's Eve and Anzac Day), although there is no consistency between jurisdictions over which days are exempt. These exceptions are not included in Table 14.A1.

After the 1970s, the dominant free market ideology and pressure from commercial interests contributed to loosening of restrictions on closing hours, although it can be seen from Table 14.1 that the 'ordinary trading hours' for Monday to Saturday have not been extended anywhere beyond 12 midnight for hotels and off-premises licences. What did change in recent decades was a shift towards allowing extended hours with special applications and licences.

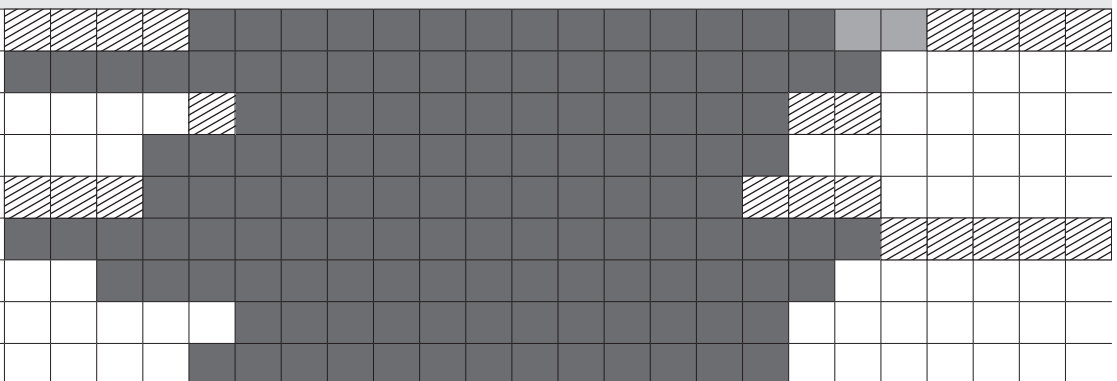
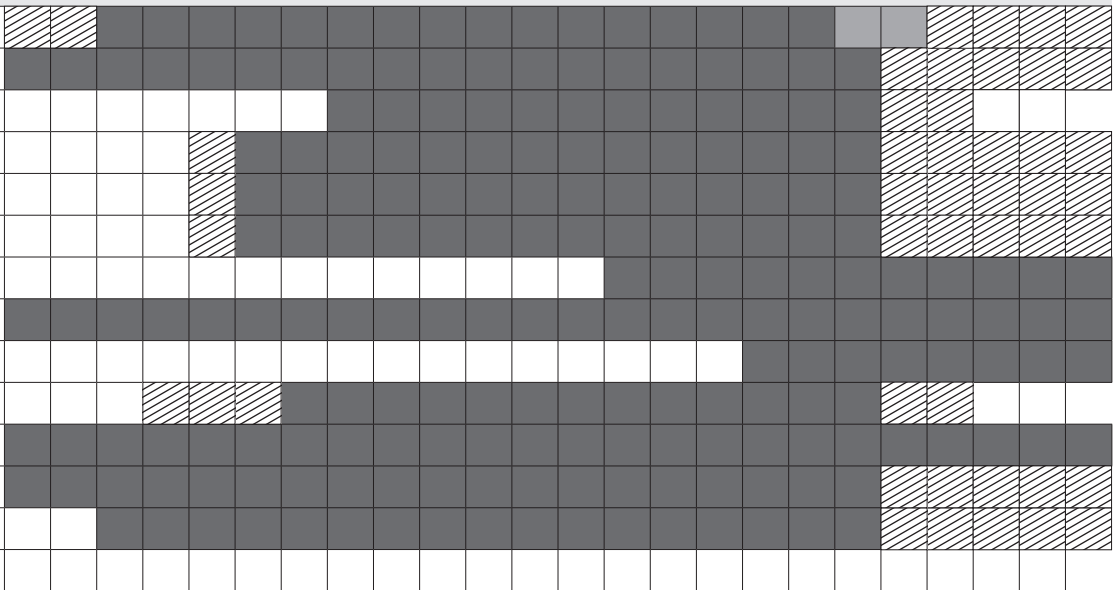
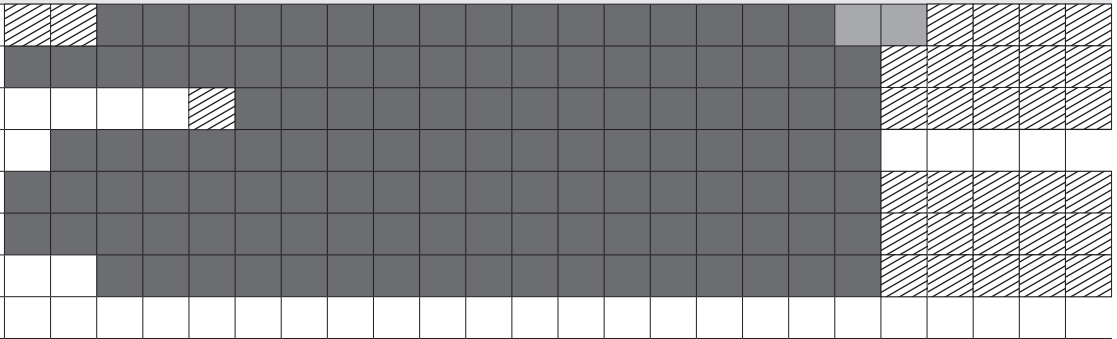
**Table 14.1: Ordinary and extended trading hours by licence type and by state and territory**

Licence type	Specific licence type
<b>(1) On-premises hotel</b>	
Vic.	
NSW	
Qld	
WA	
SA	
Tas.	
ACT	
NT (case by case)	
<b>(2) On-premises—other</b>	
Vic.	On-licence (bar, nightclub, restaurant)
NSW	On-premises
NSW	Small bar
Qld	On-premises (entertainment)
Qld	Restaurant
Qld	Bar
WA	Nightclub
WA	Restaurant
SA	Entertainment
SA	Small venue
SA	Restaurant
Tas.	On-licence
ACT	On-licence (bar, nightclub, restaurant)
NT (case by case)	
<b>(3) Off-premises</b>	
Vic.	
NSW	
Qld	
WA	
SA: extended no more than 13 hours	
Tas.	
ACT	
NT Sunday–Friday	
NT Saturday	

	Ordinary trading hours
	Potential for extended trading hours by authorisation but not 'late night' extended hours (Vic.)
	Potential for extended trading hours by authorisation

Time of day (5 am to 5 am Monday to Saturday)

5 6 7 8 9 10 11 12 1 2 3 4 5 6 7 8 9 10 11 12 1 2 3 4



Ordinary trading hours are not a good depiction of the trading hours of venues, as can be seen in Table 14.2, which reveals the large number of hotel and on-premises licences in Victoria with authorised extended hours.

**Table 14.2: Percentage of licences with authorised extended hours in Victoria**

Victoria	Ordinary trading hours licences	Late-night trading licences	Licences with authorised extended hours (%)
General (hotel) licence (at end of June 2013)	1486	495	33.3
On-premises licence	2197	384	17.5
Packaged liquor licence (off-premises)	1973	2	0.1

Source: Victorian Commission for Gambling and Liquor Regulation (6)

## The rise of the night-time economy

In recent years, late night became redefined in Australia, as in the United Kingdom, as a frontier to be opened up, among other things, to commercial exploitation. A vibrant night-time economy was put forward as a necessity to attract and keep tourism. As it was put in the United Kingdom House of Commons in 2005, 'We have developed a new economy in this country, a night-time economy...One of the few areas where we can develop jobs and where we can create wealth is in the alcohol industry and in the night-time economy—bars, clubs and industries such as fast food' (in 7:1).

In the past few years, the phrase 'night-time economy' (NTE) has taken on a more negative meaning. A 2013 consultant's report to an Australian local government committee felt it necessary to recognise that 'the acronym NTE has become shorthand for an important strategic dialogue about the management and regulation of places at night and the negative aspects of our communities that can be played out in that space' (8:6).

In recent years, trouble on the streets from late-night intoxication, particularly on weekends and before holidays, has become a major theme in the media. The media reports are to some extent backed up by rising statistics for alcohol-related problems (for example, Livingston et al. (9)) and by studies that show increasing intoxication among young people on a night out as the night wears on (for example, Miller et al. (10)). In New South Wales, the crescendo of concern about late-night alcohol-related street assaults reached a peak in early 2014 following the death of an 18-year-old arising from an alcohol-related assault in Sydney's Kings Cross on New Year's Eve. This resulted in a crisis response by the state government, discussed below (11).

## Impacts of changes in hours of sale on alcohol-related harms

The changes called for in New South Wales in 2014 drew, in part, on the results of a particular study (described below) of shortened late-night opening hours and other changes in Newcastle. This study is one among many in an active tradition of Australian studies on the effects of changes in hours or days of sale (12); almost all have been 'natural experiment' analyses, some with control sites, of what happens when laws or regulations change. The studies fall into three main groups, tending to appear in different time periods, and reflect the trends at particular times in Australian regulations and laws. The earlier studies were primarily about the effects of the ending of 6 pm closing and of the introduction of Sunday opening (13). More recently, there were studies of the effects of changes in daytime opening and sales hours that were intended to reduce problems from Indigenous drinking in



towns and settlements in the Northern Territory and elsewhere; these changes generally supported the principle that rates of problems from drinking can be influenced by the conditions of its availability, and particularly by trading hours for alcoholic beverages (12). The most recent studies have often focused on the effects of changes in late-night closing hours. This last group is the main concern of this chapter.

A study about the Tasmanian introduction in 1977 of flexible hours chosen by the hotels, as late-night closing hours were first being introduced, found that there was a 10.8 per cent increase in the number of traffic casualty accidents in the period from 10 pm to 6 am (14). Two instances in the 1980s of temporary extensions of hours, in connection with the Commonwealth Games in Brisbane in 1982 and the America's Cup in Fremantle in 1986, found less evidence of effects. Smith (15) found that the Brisbane extension was not associated with additional casualty or property damage accidents. He hypothesised that an intensive traffic law enforcement campaign during the Games may have offset any effects of the extensions in hours. McLaughlin and Harrison-Stewart (16) used a before–after survey of males aged 18–28 in Fremantle and a control site to study the effects of the 1986 extension. They found that heavier drinkers were more likely than others to make use of the extended hours of sales. But there was no net increase in consumption reported by the Fremantle residents after the increase in hours. It can be argued that what happens with temporary extended hours for special events is not very indicative for what would happen with permanent changes, since there are usually also extended provisions for public transportation and policing in connection with the events.

With permanent changes, evaluation results have been less equivocal. Three papers from the National Drug Research Institute (12, 17, 18) studied different aspects of an extension of hours of opening (to 1 am rather than midnight) of some hotels in Perth. After the change, assaults in and around the hotels with extended licences increased, as did traffic crash rates connected with drinking at the hotels studied.

A comprehensive review in Babor et al. (19:136) concluded that 'when hours and days of sale are increased, consumption and harm increase and vice versa, conclusions based on studies in Australia, Brazil, Canada, the Nordic countries, and the USA'. International studies have since come to the same conclusion about levels of harm. For example, systematic reviews have found that restricting hours or days of availability of alcohol will in general lead to reductions in alcohol-attributable harm (20–22). In a Norwegian study of the impact of changes to bar closing hours, Rossow and Norström (23) concluded that each extra hour contributed a 16 per cent increase in violent crime, and also found a demonstrable symmetry, with a one-hour restriction of closing hours being expected to reduce violent crime by a similar amount. In commenting on Rossow and Norström, Graham (24) has suggested that it is time to focus on studies to find the optimal time for closing licensed premises, although she suggests that the size of the effect would be likely to be moderate at best. In a United States study, Schofield and Denson (25) found that every one hour increase in weekly outlet business hours was associated with a greater reported incidence of violent crimes generally, more aggravated assault and more reported non-gun violence. In Iceland, longer opening hours of restaurants and bars in Reykjavik, with most premises closing between 3 am and 5 am, contributed to a rise in harmful events, including admissions to emergency departments for alcohol-related incidents, in the city centre (26). In Colombia, extended hours of sales and consumption of alcohol were associated with an increased risk of homicides (27).

Reflecting and perhaps also influencing the current shift to greater public scepticism about extended opening hours (28), more recent studies in Australia have focused on new restrictions on closing hours, a tradition inaugurated by a study of the effects of earlier nightclub closing hours in 1994 in Darwin. This study found mixed results: on the one hand, substantial reductions (33 per cent on weekends, 28 per cent on week nights) in the level of disorder in the vicinity of nightclubs compared with the same time one year earlier and, on the other hand, almost a doubling of reported assaults and related offences (29). In Newcastle, New South Wales, restricted opening hours were introduced in 2008 in the central business district (CBD) (initially to 3 am; later to 3.30 am) (30). The pulling back of opening hours was accompanied by a 1.30 am lockout and other measures (30). An analysis of the impact of this policy intervention concluded that there was a 37 per cent reduction in assaults

between 10 pm and 6 am in Newcastle in comparison to a control locality (30). A more recent analysis found a gradual reduction in injury-related hospital emergency department presentations (31). Both Miller et al. (31) and Kypri et al. (32), in their five-year follow-up study, concluded that restricted trading hours in Newcastle had an immediate and long-term effect on reducing alcohol-related harm. Miller et al. made a clear recommendation that restricted trading hours should be considered as a policy option in communities with unacceptable levels of alcohol-related harm (see also Chapter 21 in this book). In commenting on Kypri et al.'s results (30), Stockwell (33:311) noted that:

Perhaps one of the most remarkable things about this whole literature is that adding or subtracting just 1 or 2 hours of trading after midnight can make such a substantial difference to rates of violence. In a Perth study, bars permitted to trade just 1 or 2 hours extra after midnight were found to double the rate of late-night violent incidents reported to the police.

## The political response: trading hours in initiatives to re-regulate late-night sales

Concern about problems associated with late-night trading began to rise in the late 2000s. A mandatory six-hour closure period was introduced into New South Wales' liquor licensing legislation in 2008 to address the 24-hour trading licences that some venues had previously procured under the legislation. As already discussed, 2008 was also the year that licensing changes in Newcastle were implemented. Studies of the Newcastle experience in 2008 have been so widely cited that there is now talk of the 'Newcastle model' of earlier night-time closing hours (34), which is widely cited in proposals to wind back late-night trading hours for existing licensees (35). In January 2014, in response to alcohol-related violence, the New South Wales Government recommended a comprehensive package, including the introduction of 3 am last drinks across an expanded CBD precinct and 1.30 am lockouts, as well as a new state-wide 10 pm closing time for all bottle shops and liquor stores (36).

Although not involving winding back hours, in South Australia a Late Night Trading Code of Practice was introduced in October 2013. This requires a higher standard of operation during late-night trading hours, including a range of restrictions after midnight, no shots (drinks of undiluted spirits) after 2 am and no entry to licensed premises after 3 am.

It is somewhat politically easier to tackle late-night trading through restrictions on new applications for licences, and there is currently a range of freezes on such applications at the state level. Due to an increase in violence and anti-social behaviours in some entertainment precincts, Queensland, New South Wales and Victoria implemented freeze or moratorium periods on the issuing of extended trading hour authorisations in these areas. The aim of such freezes was to contain growth in extended trading licences so that long-term strategies to improve the safety and amenity of the designated precincts could take effect. In Victoria, there is currently (until 30 June 2015) a freeze on late-night licence applications in the local government areas of Melbourne, Port Phillip, Stonnington and Yarra. In New South Wales, a temporary freeze has been in place in the Kings Cross, Oxford/Darlinghurst and CBD precincts of the City of Sydney local government area since 2009. The freeze applies to applications for new liquor licences (hotels, general bars, nightclubs, liquor stores) and applications for extended trading hours. The Kings Cross freeze has been extended to 2015, but the Oxford/Darlinghurst freeze expired at the end 2013. The southern CBD freeze was allowed to expire in December 2012 to enable the trial of a new Environment and Venue Assessment Tool to assess liquor licensing applications. In Queensland, there was a moratorium from 16 September 2009 to 31 March 2014 on new extended trading hours approvals (between 12 am and 5 am) in the extended trading hours precinct, which is 'an area that has a concentration of premises that have an extended trading hours approval between 12 am and 5 am' (37).

## Liquor Act reviews and late-night trading hours

In 2013, reviews of the relevant liquor licensing Acts were either initiated or reported on in New South Wales, Queensland, Western Australia, South Australia, Tasmania and the Australian Capital Territory (38–44). Each review took large numbers of submissions, which are not reviewed here but usually had a divergence of views about trading hours between industry interests and the community, health and research sectors. In summarising the views of the community, health and research sector, the New South Wales report on the review of the *Liquor Act 2007* noted that the most consistent response was that 24-hour trading should be abolished and a blanket closing time of 3 am be introduced, and there were calls for the Newcastle solution mentioned above (38:54–5). However, the review concluded that there was 'insufficient research to inform the review that this is the optimal closure hour that would result in an acceleration of the rates of decline in alcohol-related violence evidenced since 2008' (38:58). The review concluded that it did not support calls for blanket trading hours or a 'one size fits all' policy and, furthermore, that the current legislative framework was sufficient to deal with risk areas through a variety of enforcement initiatives (38:59). As discussed above, events in the following weeks pushed the New South Wales Government to a different stance, including a state-wide rollback of off-premises sales hours.

In Western Australia, the Independent Review Committee concluded (39:139):

A licensee's ability to operate licensed premises during extended trading hours should be viewed as a privilege, not a right. It is also important to note, as many factors affect the operation of licensed premises, it would be irresponsible for the licensing authority to automatically renew a permit without investigating how the previous permit was being managed and any other associated issues in relation to the operation of the licensed premises.

The Committee noted that the licensing authority currently used its discretion in granting an extended trading hours permit and that this was a suitable practice, although it did recommend that the current trading hours and extended trading permits of other licensed premises in the locality be considered in the determination of an application for an ongoing hours permit. However, the Committee also recommended lifting the current Sunday trading restrictions for liquor stores in non-metropolitan areas to allow such trading, unless liquor restrictions were in place or where it would impact on a liquor accord (39:238).

In South Australia, the report of an inquiry into the adequacy and appropriateness of laws and practices relating to the sale and consumption of alcohol found that although restrictions on trading hours should be investigated on an ongoing basis in applying the *Liquor Licensing Act 1997*, the Committee recognised that this was already the current practice of the Office of the Liquor and Gambling Commissioner (40:38).

In Tasmania, a discussion paper prepared to guide a review of the *Liquor Licensing Act 1990* did not specifically mention trading hours, as it was grappling with the overall inadequacy of the Tasmanian legislation compared to other states and territories (41). A later 'synopsis of submissions' (42) did mention without further comments submissions calling for restrictions on trading hours, but put this under the heading 'Miscellaneous issues raised'.

In general, it seems that restrictions on trading hours are still a politically sensitive issue, in that alcohol industry interests will strongly oppose restrictions, so it takes a spate of headlines and a sense of crisis, as in New South Wales at the end of 2013, for governments to act on this issue.

## Conclusions

As discussed in this chapter, the evidence that restricting late-night trading is an effective public health measure is quite strong, both in Australia and internationally (particularly around violence). In spite of

this evidence, there has been little sign until very recently that Australian state governments consider trading hours restrictions a politically viable approach. Although restrictions on trading hours have been the focus of many submissions to 2013 reviews of liquor licensing legislation, this has not usually translated into recommendations to change the trading conditions in the liquor licensing legislation as summarised in Table 14.A1. The prevailing view appears to be that the regulatory bodies that determine licence applications for extended trading hours should be left with the power to determine each application on a case by case basis. In the reports from the reviews, the only recommended change in trading hours was a relaxation of the restriction of no trading on Sundays for packaged liquor outlets in non-metropolitan areas in Western Australia, albeit not in areas where there were existing liquor restrictions or if it contravened a liquor accord.

The landscape has been altered somewhat by the political storm in January 2014 over drunken assaults in Sydney. Ongoing media and public pressure there brought a reluctant government to reverse its course and propose substantial trading hours restrictions. These sweeping changes have the potential to stir action in other jurisdictions, particularly if evaluations identify reductions in violence commensurate with similar restrictions in Newcastle. Interestingly, the policy changes in New South Wales also include state-wide earlier closing of packaged liquor outlets—an area that has thus far received little research attention. Western Australia already has substantially stricter regulation around allowable trading hours for packaged liquor than the rest of Australia, and research on the impact of these differences is critical to inform ongoing policy development. Thus, after a period of steady expansion of late-night trading in Australia, there are signs of change in the political winds concerning the acceptability of late-night alcohol sales.

## Appendix

**Table 14.A1: Closing hours for hotel licences, on-premises licences and off-premises licences as prescribed in liquor licensing legislation by state (legislation as of 13 December 2013) and liquor regulations by territory**

Hotel licences		
State / territory	Ordinary trading hours	Extended trading hours
Vic.	<p><b>Ordinary trading hours</b></p> <p>General licence: 7 am to 11 pm            Sunday: 10 am to 11 pm            30-minute period for consumption after hours</p>	<p><b>Extended hours</b></p> <p>By approval of Commission and specified in the licence            General licence: to 1 am in the first instance (from 11 pm to 1 am is neither 'ordinary' nor 'late night' trading hours)            'Late night trading' some time from 1 am up to 24-hour licence. Any period, up to 2 am, 3 am, up to 7 am.            Late night (general) licence: a late night licence enables general, on-premises and packaged liquor licences trading during high-risk late hours to be grouped into a single category.</p>
NSW	<p><b>Standard trading period</b></p> <p>Hotel licence: 5 am to midnight            Sunday: 10 am to 10 pm            Regulations may prescribe a shorter period</p>	<p><b>Extended trading period</b></p> <p>By authorisation of the Authority for an extended trading authorisation            Hotel licence: a specified period between midnight and 5 am (except Sunday/Monday)            Sunday: a specified period between 10 pm and midnight            Sunday exception for hotels in City of Sydney, Kings Cross precinct, Oxford–Darlinghurst precinct, Kosciuszko National Park (on application): a specified period between midnight and 5 am on Sunday/Monday</p>

### Hotel licences (cont.)

State / territory	Ordinary trading hours	Extended trading hours
Qld	<b>Ordinary trading hours</b> General licence: 10 am to midnight	<b>Extended trading</b> General licence: 9 am to 10 am by approved application upon demonstrated need in the community Midnight to 5 am subject to approval based on strict criteria
WA	<b>Ordinary permitted hours</b> Hotel licence: 6 am to midnight Sunday: 10 am to 10 pm	<b>Extended trading permit—ongoing extended hours</b> Hotel licence: case by case authorisation to sell liquor outside of the normal trading hours where the licensee has demonstrated that trading beyond the normal permitted trading hours is in the public interest If the extended hours allow trading beyond 1 am the licensee is required to comply with standard security and closed circuit television conditions
SA	<b>Authorised trading hours</b> Hotel licence: 5 am to midnight Sunday: 11 am to 8 pm	<b>Extended trading</b> Hotel licence: Midnight to 5 am Sunday: between 8 am and 11 am or 8 pm and midnight
Tas.	<b>Ordinary trading hours</b> General licence: 5 am to midnight	<b>Extended hours apply for an out-of-hours permit (case by case)</b> Between midnight and 5 am
ACT	<b>Standard licensed times</b> General licence: 7 am to midnight	<b>Extended licensed times</b> Anything from 1 am, 2 am, 3 am, 4 am, to 5 am
NT	Licence: no prescribed operating hours, the Commission to determine conditions	Examples suggest 12 midnight, 2am, 4 am are possible

### On-premises licences

State / territory	Ordinary trading hours	Extended trading hours
Vic.	<b>Ordinary trading hours</b> <b>On-premises licence:</b> 7 am to 11 pm Sunday: 10 am to 11 pm	<b>Extended hours</b> As for general licence except after 1 am called late night (on-premises) licence. Up to 24-hour licence (any period, 2 am, 3 am etc. up to 7 am)
NSW	<b>Standard trading period</b> <b>On-premises licence:</b> 5 am to midnight Sunday: 10 am to 10 pm <b>Small bar</b> Noon to midnight any day of the week	<b>Extended trading period</b> By authorisation of the Authority for an extended trading authorisation On-premises licence: a specified period between midnight and 5 am on any day of the week, i.e. up to 24 hours BUT subject to six-hours closure period since 30 October 2008 (licences granted since then or extended trading authorisations granted since then) usually to be taken continuously from 4 am to 10 am. A specified period between 5 am and 10 am on Sunday A specified period between 10 pm and midnight on Sunday <b>Small bar</b> Midnight to 2 am if not in freeze precinct Can apply for later than 2 am if not in freeze precinct Can apply for later than midnight if in freeze precinct Cannot authorise trading after 5 am or before 10 am on any day of the week

### On-premises licences (cont.)

State / territory	Ordinary trading hours	Extended trading hours
Qld	<p><b>Ordinary trading hours</b>  <b>On-premises licence</b> (covers entertainment):            10 am to midnight  <b>Restaurant</b>            10 am to midnight  <b>Bar</b>            10 am to midnight</p>	<p><b>Extended trading for each of these licences</b>            9 am to 10 am by approved application upon demonstrated need in the community            Midnight to 5 am subject to approval based on strict criteria</p>
WA	<p><b>Ordinary permitted hours</b>  <b>Nightclub licence:</b> 6 pm to 5 am            Sunday: 8 pm to midnight  <b>Restaurant</b>            24 hours</p>	As for hotels
SA	<p><b>Authorised trading hours</b>  <b>Entertainment venue licence:</b> 9 pm to 5 am (with entertainment)            No meal etc.: Monday to Saturday            9 pm to midnight, Sunday 11 am to 8 pm  <b>Small venue</b>            11 am to midnight  <b>Restaurant</b>            24 hours</p>	<p>Extended trading can be applied for (not Good Friday or Christmas Day).</p> <p><b>Small venue</b>            8 am to 11 am and midnight to 2 am</p>
Tas.	<p><b>Ordinary trading hours</b>            General licence: 5 am to midnight</p>	<p><b>Extended hours apply for an out-of-hours permit (case by case)</b>            Between midnight and 5 am</p>
ACT	<p><b>Standard licensed times</b>            On-licence: 7 am to midnight</p>	<p><b>Extended licensed times</b>            Anything from 1 am, 2 am, 3 am, 4 am, to 5 am</p>
NT	<p>Licence: no prescribed operating hours, the Commission to determine conditions</p>	<p>Examples suggest 12 midnight, 2am, 4 am are possible</p>

### Off-premises licences

State / territory	Ordinary trading hours	Extended trading hours
Vic.	<p><b>Ordinary trading hours</b>            Packaged liquor licence: 9 am to 11 pm            Sunday: 10 am to 11 pm</p>	<p><b>Extended hours</b>            As for general licence, except after 1 am called late night (packaged liquor) licence. The most common extension is early trading hours; far less common, based on November 2013 data, is for trading to midnight. Only one licence to 2 am and one licence (airport) 24 hours.</p>
NSW	<p><b>Standard trading period</b>            Packaged liquor licence: 5 am to midnight            Sunday: 10 am to 10 pm</p>	<p><b>Extended trading period</b>            By authorisation of the Authority for an extended trading authorisation            Packaged liquor licence: a specified period between 5 am and 10 am on a Sunday            A specified period between 10 pm and midnight on a Sunday</p>

## Off-premises licences (cont.)

State / territory	Ordinary trading hours	Extended trading hours
<b>Qld</b>	<b>Ordinary trading hours</b> Take away liquor sales for commercial liquor licences including detached bottle shop: 10 am to 10 pm (if approved after 1 December 2010) 10 am to midnight (if approved before 1 December 2010)	<b>Extended trading</b> 9 am to 10 am 10 pm to midnight for takeaway liquor sales for commercial hotel licences by approved application upon demonstrated need in the community
<b>WA</b>	<b>Ordinary permitted hours</b> Liquor store: 8 am to 10 pm Sunday in metropolitan area: 10 am to 10 pm Sunday in non-metropolitan area: not permitted	Case by case
<b>SA</b>	<b>Authorised trading hours</b> Retail liquor licence: 8 am to 9 pm	<b>Extended trading</b> Retail liquor licence: can be applied for: no earlier than 5 am, no later than midnight, for no more than 13 hours, as authorised by licensing authority
<b>Tas.</b>	<b>Ordinary trading hours</b> Off-premises licence: 5 am to midnight	<b>Extended hours apply for an out-of-hours permit (case by case)</b> Between midnight and 5 am
<b>ACT</b>	<b>Standard licensed times</b> Off licence: 7 am to 11 pm	No extension according to Regulations
<b>NT</b>	Off-premises licence: Sunday to Friday: 10 am to 10 pm Saturday and public holidays: 9 am to 10 pm	

## References

- Kirkby D, Luckins T, McConville C. *The Australian pub*. Sydney: University of New South Wales Press, 2010.
- Mellor B. Sunday liquor: sham or shame? *Sydney Sun-Herald*. 9 April 1978, p. 51. Accessed 13 January 2014 <<http://news.google.com/newspapers?nid=1301&dat=19780409&id=wPtjAAAAIBA&sjid=e-YDAAAIBA&pg=2554,3107135>>.
- Fitzgerald R, Jordan TL. *Under the influence: a history of alcohol in Australia*. Sydney: ABC Books, 2009.
- Room R. The long reaction against the wowser: the prehistory of alcohol deregulation in Australia. *Health Sociology Review* 2010;19(2):151–63.
- Connell S. *Liquor retailing in Australia*. Industry report G5123. IBISWorld, 2012.
- Victorian Commission for Gambling and Liquor Regulation. Victorian liquor licences as at 30 Nov 2013. Melbourne: VCGLR, 2013. Accessed 22 January 2014 <[https://assets.justice.vic.gov.au/vcglr/resources/a203ccf8-d775-4525-b635-dc47da6c1a7b/vcglr\\_renewablelicences\\_nov13.pdf](https://assets.justice.vic.gov.au/vcglr/resources/a203ccf8-d775-4525-b635-dc47da6c1a7b/vcglr_renewablelicences_nov13.pdf)>.
- Roberts M, Eldridge A. *Planning the night-time city*. London: Routledge, 2009.

8. Bevan T, License A, Lester M. *The Australian night time economy: a first analysis, 2009 to 2011: report to the National Local Government Drug and Alcohol Advisory Committee*. Newcastle upon Tyne: TBR, 2013.
9. Livingston M, Matthews S, Barratt M, Lloyd B, Room R. Diverging trends in alcohol consumption and alcohol-related harm in Victoria. *Australian and New Zealand Journal of Public Health* 2010;34(4):368–73.
10. Miller P, Pennay A, Droste N, Jenkinson R, Chikritzhs T, Tomsen S et al. *Patron Offending and Intoxication in Night Time Entertainment Districts (POINTED): final report*. Geelong, Vic.: Deakin University for the National Drug Law Enforcement Research Fund, 2013. Accessed 22 March 2014 <[www.ndlerf.gov.au/pub/Monograph\\_46.pdf](http://www.ndlerf.gov.au/pub/Monograph_46.pdf)>.
11. Nicholls S, Whitbourn M. Premier pledges to take action on alcohol-fuelled violence. *Sydney Morning Herald*. 22 January 2014. Accessed 23 January 2014 <[www.smh.com.au/nsw/premier-pledges-to-take-action-on-alcoholfuelled-violence-20140121-316y0.html](http://www.smh.com.au/nsw/premier-pledges-to-take-action-on-alcoholfuelled-violence-20140121-316y0.html)>.
12. Chikritzhs T, Gray D, Lyons Z, Sagggers S. *Restrictions on the sale and supply of alcohol: evidence and outcomes*. Perth: Curtin University, National Drug Research Institute, 2007.
13. Smith DI. Effectiveness of legislative and fiscal restrictions in reducing alcohol related crime and traffic accidents. In: Vernon J, ed. *Alcohol and crime*. Canberra: Australian Institute of Criminology, 1990, pp. 223–40.
14. Smith DI. Effect on traffic accidents of introducing flexible hotel trading hours in Tasmania, Australia. *British Journal of Addiction* 1988;83(2):219–22.
15. Smith DI. Extended alcohol trading hours during the 1982 Brisbane Commonwealth Games and traffic accidents. *Australian Drug and Alcohol Review* 1988;7(3):363–7.
16. McLaughlin KL, Harrison-Stewart AJ. The effect of a temporary period of relaxed licensing laws on the alcohol consumption of young male drinkers. *International Journal of the Addictions* 1992;27(4):409–23.
17. Chikritzhs T, Stockwell T. The impact of later trading hours for Australian public houses (hotels) on levels of violence. *Journal of Studies on Alcohol* 2002;63(5):591–9.
18. Chikritzhs T, Stockwell T. The impact of later trading hours for hotels on levels of impaired driver road crashes and driver breath alcohol levels. *Addiction* 2006;101(9):1254–64.
19. Babor T, Caetano R, Casswell S, Edwards G, Giesbrecht N, Graham K et al. *Alcohol: no ordinary commodity: research and public policy*. 2nd edn. Oxford: Oxford University Press, 2010.
20. Hahn RA, Kuzara JL, Elder R, Brewer R, Chattopadhyay S, Fielding J et al. Effectiveness of policies restricting hours of alcohol sales in preventing excessive alcohol consumption and related harms. *American Journal of Preventive Medicine* 2010;39(6):590–604.
21. Middleton JC, Hahn RA, Kuzara JL, Elder R, Brewer R, Chattopadhyay S et al. Effectiveness of policies maintaining or restricting days of alcohol sales on excessive alcohol consumption and related harms. *American Journal of Preventive Medicine* 2010;39(6):575–89.
22. Popova S, Giesbrecht N, Bekmuradov D, Patra J. Hours and days of sale and density of alcohol outlets: impacts on alcohol consumption and damage: a systematic review. *Alcohol and Alcoholism* 2009;44(5):500–16.
23. Rossow I, Norström T. The impact of small changes in bar closing hours on violence. The Norwegian experience from 18 cities. *Addiction* 2012;107(3):530–7.
24. Graham K. Commentary on Rossow and Norström (2012): when should bars close? *Addiction* 2012;107(3):538–9.



25. Schofield TP, Denson TF. Alcohol outlet business hours and violent crime in New York State. *Alcohol and Alcoholism* 2013;48(3):363–9.
26. Ragnarsdóttir T, Kjartansdóttir Á, Kristinsdóttir I, Theódórsdóttir S, Kristjánsson M, Davídsdóttir S. Alcohol-related mishaps on weekends in Reykjavík. *Nordic Studies on Alcohol and Drugs* 2011;28(1):83.
27. Sánchez Ál, Villaveces A, Krafty RT, Park T, Weiss HB, Fabio A et al. Policies for alcohol restriction and their association with interpersonal violence: a time-series analysis of homicides in Cali, Colombia. *International Journal of Epidemiology* 2011;40(4):1037–46.
28. Callinan S, Room R, Livingston M. Changes in Australian attitudes to alcohol policy: 1995–2010. *Drug and Alcohol Review*. 2014;33(3):227–34.
29. d'Abbs P, Forner J. *An evaluation of measures designed to reduce nightclub related violence and disorder in Darwin*. Darwin: Menzies School of Health Research, 1995.
30. Kypri K, Jones C, McElduff P, Barker D. Effects of restricting pub closing times on night-time assaults in an Australian city. *Addiction* 2011;106(2):303–10.
31. Miller P, Tindall J, Sonderlund A, Groombridge D, Lecathelinais C, Gillham K et al. *Dealing with Alcohol and the Night-Time Economy (DANTE): final report*. Geelong, Vic.: Deakin University and Hunter New England Population Health for the National Drug Law Enforcement Research Fund, 2012. Accessed 20 March 2014 <[www.ndlerf.gov.au/pub/Monograph\\_43.pdf](http://www.ndlerf.gov.au/pub/Monograph_43.pdf)>.
32. Kypri K, McElduff P, Miller P. Restrictions in pub closing times and lockouts in Newcastle, Australia five years on. *Drug and Alcohol Review* 2014;33(3):323–6.
33. Stockwell T. Commentary on Kypri et al. (2011): fighting the good fight against alcohol-related violence: one bar or one hour at a time? *Addiction* 2011;106(2):311–12.
34. *Sydney Morning Herald*. Time to curb the alcohol culture. Editorial. 11 January 2014. Accessed 13 January 2014 <[www.smh.com.au/comment/smh-editorial/time-to-curb-the-alcohol-culture-20140110-30mfc.html](http://www.smh.com.au/comment/smh-editorial/time-to-curb-the-alcohol-culture-20140110-30mfc.html)>.
35. Foundation for Alcohol Research and Education. *10 point plan to reduce alcohol-related harms in NSW*. Canberra: FARE, 2012.
36. NSW Government Office of Liquor, Gaming and Racing. Lockouts and mandatory minimums to be introduced to tackle drug and alcohol violence. Media release. Sydney: OLGR, 2014. Accessed 22 January 2014 <[www.premier.nsw.gov.au/sites/default/files/LOCKOUTS%20&%20MANDATORY%20MINIMUMS%20TO%20BE%20INTRODUCED%20TO%20TACKLE%20DRUG%20AND%20ALCOHOL%20VIOLENCE.pdf](http://www.premier.nsw.gov.au/sites/default/files/LOCKOUTS%20&%20MANDATORY%20MINIMUMS%20TO%20BE%20INTRODUCED%20TO%20TACKLE%20DRUG%20AND%20ALCOHOL%20VIOLENCE.pdf)>.
37. Queensland Government Office of Liquor and Gaming Regulation. Trading hours—permanent and temporary. 2013. Accessed 5 March 2014 <[www.olgr.qld.gov.au/resources/liquorDocs/fact-sheet-trading-hours.pdf](http://www.olgr.qld.gov.au/resources/liquorDocs/fact-sheet-trading-hours.pdf)>.
38. NSW Government Office of Liquor, Gaming and Racing. Report on the statutory review of the *Liquor Act 2007* and *Gaming and Liquor Administration Act 2007*. Sydney: OLGR, 2013. Accessed 5 March 2014 <[www.olgr.nsw.gov.au/pdfs/Review\\_LA\\_GALAA\\_NOV2013.pdf](http://www.olgr.nsw.gov.au/pdfs/Review_LA_GALAA_NOV2013.pdf)>.
39. Independent Review Committee. *Liquor Control Act 1988: report of the Independent Review Committee*. Perth: Independent Review Committee appointed by the Minister for Racing and Gaming, 2013. Accessed 5 March 2014 <[www.rgl.wa.gov.au/ResourceFiles/Publications/23-12-2013%20-%20Liquor%20Control%20Act%201988%20%E2%80%93%20Review%20Report.pdf](http://www.rgl.wa.gov.au/ResourceFiles/Publications/23-12-2013%20-%20Liquor%20Control%20Act%201988%20%E2%80%93%20Review%20Report.pdf)>.

40. South Australian Government Social Development Committee. *Inquiry into the sale and consumption of alcohol: interim report*. Adelaide: Parliament of South Australia, 2013.
41. Government of Tasmania Liquor and Gaming Branch. *Review of the Liquor Licensing Act 1990: discussion paper*. Hobart: Department of Treasury and Finance, 2013. Accessed 5 March 2014 <[www.treasury.tas.gov.au/domino/df/df.nsf/LookupFiles/LLAReviewDiscussionPaper.PDF/\\$file/LLAReviewDiscussionPaper.PDF](http://www.treasury.tas.gov.au/domino/df/df.nsf/LookupFiles/LLAReviewDiscussionPaper.PDF/$file/LLAReviewDiscussionPaper.PDF)>.
42. Government of Tasmania Liquor and Gaming Branch. *Review of the Liquor Licensing Act 1990: synopsis of submissions*. Hobart: Department of Treasury and Finance, 2013. Accessed 5 March 2014 <[www.treasury.tas.gov.au/domino/df/df.nsf/LookupFiles/20131224\\_Synopsis\\_of\\_Submissions\\_to\\_the\\_Review\\_of\\_the\\_Liquor\\_Licensing\\_Act.pdf/\\$file/20131224\\_Synopsis\\_of\\_Submissions\\_to\\_the\\_Review\\_of\\_the\\_Liquor\\_Licensing\\_Act.pdf](http://www.treasury.tas.gov.au/domino/df/df.nsf/LookupFiles/20131224_Synopsis_of_Submissions_to_the_Review_of_the_Liquor_Licensing_Act.pdf/$file/20131224_Synopsis_of_Submissions_to_the_Review_of_the_Liquor_Licensing_Act.pdf)>.
43. ACT Government Office of Regulatory Services Department of Justice and Community Safety. *Liquor Act reform review*. Canberra: ORS, 2013. Accessed 5 March 2014 <[www.ors.act.gov.au/community/liquor](http://www.ors.act.gov.au/community/liquor)>.
44. Queensland Government. *Liquor and Gaming (Red Tape Reduction) and other Legislation Amendment Bill 2013: explanatory notes*. Brisbane: Queensland Government, 2013. Accessed 7 March 2014 <[www.legislation.qld.gov.au/Bills/54PDF/2013/LiquorGamingRedTapeAmB13E.pdf](http://www.legislation.qld.gov.au/Bills/54PDF/2013/LiquorGamingRedTapeAmB13E.pdf)>.

# Chapter 15

## Point-of-sale alcohol promotions—the need for effective regulation

Sandra C Jones

### The regulatory background in Australia

The Alcohol Beverages Advertising (and Packaging) Code (the industry self-regulatory code for alcohol advertising) covers retailer advertisements (that is, those that contain information about the products offered for sale and their prices etc.) and states that these 'must comply with the spirit and intent of the Code but are not subject to any process of prior clearance' (1). The code specifically refers to 'alcohol promotion at events' but is silent on the specifics of in-store advertising and promotions, although, in theory, packaged alcohol promotions come within the Australian Association of National Advertisers definition of advertising (2:1, emphasis added):

Advertising or Marketing Communications means any material which is published or broadcast using any Medium or any activity which is undertaken by, or on behalf of an advertiser or marketer, and

- over which the advertiser or marketer has a reasonable degree of control, and
- that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct.

Most Australian states currently have guidelines or codes of practice in relation to the promotion of alcohol for on-premises consumption (for example, pubs and clubs). Rather than review each of these in detail here, I focus on the situation in New South Wales as an illustration of the problematic nature of this regulatory system.

In New South Wales, s. 102 of the *Liquor Act 2007* (the Liquor Act) gives the Director General, NSW Trade & Investment, the power to issue a notice to a licensee who is involved in a liquor promotion that is considered undesirable. The Liquor Promotion Guidelines 'are intended to provide guidance as to what issues are considered important in determining whether a liquor promotion is undesirable and may be subject to a notice' (3:5). These guidelines consist of seven principles, each of which is accompanied by an explanation and examples of unacceptable promotions:

#### Principle 1: Appeal to minors

The promotion must not have a special appeal to minors, because of the designs, names, motifs or characters in the promotion that are, or are likely to be, attractive to minors or for any other reason. (3:8)

#### Principle 2: Indecent or offensive

The promotion must not be indecent or offensive. (3:9)

#### Principle 3: Non-standard measures

The promotion must not involve the use of non-standard measures that encourages irresponsible drinking and is likely to result in intoxication. (3:10)

#### Principle 4: Emotive descriptions or advertising

The promotion should not use emotive descriptions or advertising that encourages irresponsible drinking and is likely to result in intoxication. (3:11)

#### Principle 5: Extreme discounts

The promotion should not involve the provision of free drinks or extreme discounts, or discounts for a limited duration that creates an incentive for patrons to consume liquor more rapidly than they otherwise might. (3:12)

#### Principle 6: Irresponsible, rapid or excessive consumption

The promotion should not otherwise encourage irresponsible, rapid or excessive consumption of liquor. (3:13)

#### Principle 7: Not in public interest

The promotion should not be otherwise considered to not be in the public interest. (3:14)

The Liquor Promotion Guidelines apply to *all* licensed premises under the Liquor Act that run liquor promotions, including hotels (pubs, taverns, small bars), clubs (RSL, community and sporting clubs), on-premises (restaurants, cafes, nightclubs, theatres, boats, caterers, etc.), packaged (bottle shops), producer/wholesaler and limited licences.

## Point-of-sale marketing

Point-of-sale (POS), or point-of-purchase, marketing refers to advertising and/or promotional materials at the point where a purchase will be made. POS marketing is a key strategy for product marketers, with research showing that two-thirds of all purchases result from decisions made while in the store and 90 per cent of retail store managers surveyed in the United States agreed that POS materials sell products (4). As well as POS advertising (posters, store signage, window displays etc.), POS promotions include free product samples, premiums (gifts with purchases), reduced price offers, and consumer contests and prizes.

While a detailed analysis of the extensive research base on POS marketing (primarily in the area of fast-moving consumer goods) is beyond the scope of this chapter, it is important to note that marketers have a clear understanding of the types of promotions that appeal to consumers. For example, consumers respond more favourably to promotions where the premium is provided at the time of sale and when the value of the premium is highlighted (5), and price reductions that are framed as providing 'free' product options are perceived more favourably than conventional discounts (6).

Although there is a need to continue research on alcohol advertising, what has largely been neglected is the effect of non-advertising alcohol promotions on people's (and particularly young people's) alcohol-related attitudes and behaviours. As the alcohol industry has become increasingly competitive, POS is increasingly used as a marketing tool for alcohol products, and a growing body of evidence suggests that these POS materials are positively associated with drinking and contribute to creating a pro-alcohol environment (for example, 7).

Much of the focus—in the trade press, the academic literature, legislation and policy debate—is on on-premises (venue) promotions. According to the trade press in the United States, approximately 60 per cent of people in bars make their decisions about what to drink after they arrive (8) and the role of POS is to 'grab their attention and make them aware that a particular brand is just what they want' (9:41). The British Beer and Pub Association's practice guide for pub owners and licensees lists reasons for holding POS promotions (including to boost trade during quiet periods and to showcase a new brand) but cautions that while 'promotions can give a pub a competitive edge...if badly managed or directed, they can also sometimes be perceived as encouraging customers to drink too much, and therefore as a contributory factor to public order problems' (10:3).

However, there has been limited discussion on the nature, extent, impact and potential regulation of POS promotions for packaged alcohol (that is, alcohol that is purchased and taken away for consumption, as opposed to alcohol purchased and consumed in a licensed venue). This is the focus of this chapter. As defined by the New South Wales Office of Liquor, Gaming & Racing, 'a packaged liquor licence enables the licensee to sell takeaway alcohol on the licensed premises—through a bottleshop or via home delivery, mail order, or the internet' (11). As well as bottle shops attached to pubs and clubs, this includes standalone liquor stores, liquor stores attached to supermarkets and outlets that do not have a storefront (such as online stores).

## International research

Of the few studies that have been conducted in other countries on non-advertising alcohol marketing, the primary focus has been price promotions and venue promotions. There is considerable evidence from studies conducted across three decades that there is an inverse relationship between the price of alcohol and the level of consumption (12–14) and that the effect is even more pronounced among young people (15–19). For example, as early as the 1970s, an experimental study in the United States found that alcohol consumption more than doubled during simulated 'happy hours' among both heavy and light drinkers (20).

Although the correlation between price and purchasing may be relatively straightforward, other research has found that this is only one factor contributing to alcohol purchasing patterns. For example, an environmental assessment of neighbourhoods surrounding 119 college campuses across the United States, with a focus on both off-premises and on-premises outlets that sold beer, found that for off-premises outlets (for example, bottle shops) higher binge-drinking rates were correlated with the availability of large volumes of beer, a lower average price of a carton of beer, interior and exterior advertising, and promotions such as volume discounts, advertised price specials or coupons (21).

A study of the correlates of in-store promotions for beer, based on analysis of supermarket scanner data from 64 market areas across the United States (22), found that large-volume units are more likely to be promoted than smaller package sizes. Based on evidence from previous market research that has shown in-store merchandising and promotions can substantially increase beer sales and that purchasing large package sizes may increase total consumption, the authors concluded that the prevalence of sales promotions for large-volume beer packages may result in increased beer consumption. Although this study was limited to a single product type (beer), it is likely that a similar effect would be found for other forms of alcohol (such as 'ready to drink' drinks (RTDs), which are generally sold in four-packs, six-packs and cartons).

Several recent studies have examined the association between ownership of alcohol promotional items (that is, the types of branded products that are frequently offered as premiums in alcohol POS promotions) and drinking behaviours, and have found an association between ownership of promotional items and drinking initiation (23, 24). A longitudinal study (25) examined the relationship between receptivity to alcohol marketing and the initiation of alcohol use among 1080 sixth to eighth graders who were classified as 'never drinkers' at baseline. Those who were categorised as receptive to marketing (defined as owning or wanting to use alcohol-branded merchandise) were 77 per cent more likely to have initiated drinking at the 12-month follow-up than those who did not own, or want to own, such merchandise.

## Australian research

As is the case in many other countries, much of the research that has been conducted in Australia into alcohol marketing has focused primarily on alcohol advertising. In general, these studies conclude that the current self-regulatory system for alcohol advertising is ineffective (26–30) and that Australians are generally in favour of tighter restrictions (31).

In the latter half of the last decade, three Australian studies specifically examined POS alcohol promotions, all of which were exploratory in nature. An observational study of displays of RTD alcohol products (pre-mixed beverages, ready-to-drink) in 40 bottle shops on the central coast of New South Wales, and follow-up semi-structured interviews with a staff member from each of the randomly selected bottle shops, found that more than 40 per cent of all glass-door refrigerators were used for RTDs and approximately half of the respondents perceived that RTD products were marketed to people under the legal drinking age, particularly girls (32).

A concurrent pair of studies recorded alcohol POS promotions in bottle shops (33) and licensed venues (34) in the central business district of Wollongong (Illawarra, New South Wales). In relation to packaged alcohol promotions (the focus of this chapter), the authors identified 17 different promotions across the seven stores (33) in three categories: gift with purchase (such as free caps, cooler bags and music downloads); competitions (such as the chance to win tickets to sporting events, road bikes and clothing); and buy some, get some free promotions (for example, purchase a four-pack and receive one bottle or can free). The authors concluded that, given previous research demonstrating the relationship between increased alcohol consumption and both ownership of alcohol-related merchandise and reduced per unit price, it appears that POS promotions may have the potential to further increase alcohol consumption among young people.

A more recent qualitative study consisting of a series of 12 focus groups (six with adolescents aged 16–17 and six with young people aged 18–25 (35)) explored young people's recall of, and responses to, alcohol POS promotions. Focus group discussions were conducted in Sydney (metropolitan area), Wollongong (regional) and Dubbo (rural), with four groups (two male, two female) held in each location, with an overall total of 85 participants. Unprompted recall of POS promotions was high, particularly among the older groups, predominantly for price (and price-volume) and free gift promotions. Although many participants initially stated that these promotions did not influence their purchasing or drinking decisions, on reflection most of them were able to recall (in considerable detail) promotions they had participated in (for example, a free carry bag with a four-pack of Vodka Cruisers). Price promotions were particularly popular among the older groups, especially those that were perceived as providing more alcohol for their money—with the extra alcohol seen as a 'bonus'. Consistent with this, the word 'free' clearly resonated with participants, with promotions that offered free alcohol or free gifts perceived as sufficiently appealing to encourage many participants to purchase a different brand, or a greater quantity, of alcohol. However, they were divided as to whether this would result in increased consumption, with many suggesting that they would consume all that they had purchased but others perceiving that they would, or at least would intend to, keep the 'extra' alcohol for another drinking occasion.

Comments from the focus groups (35:894–5) about the impact of POS promotions on consumption included:

I'd share it.

I'm pretty greedy so I'd consume it.

I'd probably give it to a mate or save it for another day.

I'd be more inclined to drink both of them because one is free.

You'd be celebrating.

I wouldn't save it.

I'd save it. I've got bottles sitting in the cupboard at the moment that I bought when I had heaps of money.

(18–25, males, Dubbo)

Facilitator: Would you be tempted to drink more that night?

Oh yeah.

For sure.

You only went in to buy one.

When we go to parties if there's heaps of alcohol, we'll drink heaps of alcohol.

When you've got it there in front of you, you keep pushing yourself, oh another one.

Yeah.

(16–17, females, Sydney)

Younger respondents were less likely to be motivated by promotions that offered extra volumes of alcohol because of difficulties in storage and the need to hide alcohol from parents. Regional respondents were markedly more motivated by promotions that offered price reductions (for example, two-for-one offers). Both in the general discussions and the reactions to specific promotions, competition-based promotions were the least popular (and thus the least likely to influence purchase and consumption decisions) due to the perceived low likelihood of winning and the effort required to participate.

A recent audit study of POS promotions in 12 outlets in Sydney and 12 in Perth (36) demonstrated the ubiquitous nature of these promotions. A total of 793 promotions (including duplicates) were recorded across the 24 stores, which equates to an average of 33 promotions per outlet. Just over half of the promotions ( $n = 400$ , 50.4%) were classified as non-price promotions (for example, purchase a four-pack for a chance to win a trip to Rio de Janeiro). The most frequently observed type of non-price promotion (including duplicates) was a 'competition' ( $n = 227$ ), which was substantially more frequent than 'free gift with purchase' ( $n = 145$ ) and 'gift pack' ( $n = 28$ ) promotions. Four types of price promotions were observed. The predominant form (including duplicates) was the offer of a lower price for the purchase of multiple items ( $n = 351$ ; for example, '2 bottles for \$55'). Price and non-price promotions differed significantly between store types ( $\chi^2 = 87.60$ ,  $p < 0.001$ ). Supermarkets ( $n = 240$ ) had a significantly higher number of price promotions compared to independent ( $n = 60$ ) and chain stores ( $n = 87$ ), while chain stores ( $n = 189$ ) had a significantly higher number of non-price promotions compared to supermarkets ( $n = 129$ ) and independent stores ( $n = 99$ ).

On average, the wine promotions required a purchase of 21.5 standard drinks (range 6.5–96.0); beer promotions, 25.4 standard drinks (range 2.7–84.0); spirits promotions, 28.5 standard drinks (range 5.5–44.0); and RTD promotions, 12.6 standard drinks (range 4.0–72.0). Price promotions had significantly higher purchasing requirements than non-price promotions (25.1 versus 17.3 standard drinks,  $t(782) = 6.75$ ;  $p = 0.00$ ). The number of standard drinks consumers were required to purchase in order to participate in a promotion differed significantly between store types ( $F(2790) = 11.57$ ,  $p < 0.001$ ). Supermarket promotions required purchase of a higher mean number of standard drinks ( $m = 24.20$ ,  $SD = 18.88$ ) than independent ( $m = 19.01$ ,  $SD = 14.27$ ) and chain stores ( $m = 18.35$ ,  $SD = 13.71$ ).

In 2011 the Western Australian Drug and Alcohol Office commissioned research into the impact of price and convenience on alcohol purchase and consumption (37). Using an online panel, TNS Social Research surveyed 403 adult Western Australians. Approximately one-quarter (24%) reported buying their alcohol at a liquor store co-located at a supermarket, and this was highest among the 30–49 age group (31%). One in five respondents (20%) reported buying discounted alcohol once a week or more, and more than half (55%) once a month or more. Buying cheap alcohol once a week or more was most common among 18–29 year olds (26%) and 30–49 year olds (19%). Almost three times as many respondents reported that if alcohol was discounted they would buy more frequently (26%) than less frequently (10%). Those aged 30–49 were most likely to report that they would buy more frequently than usual (34%, compared to 25% of 18–29 year olds and 19% aged 50+) and to report that they would purchase a greater quantity (40% compared to 36% of 18–29 year olds and 22% of those aged 50+).

In a follow-up to the New South Wales/Western Australian audit study, a cross-sectional survey was conducted at the same 24 bottle shops. Participants were 509 adults (aged 18 and over) exiting bottle shops having purchased alcohol. When prompted, 26.5 per cent indicated that there was a special offer, price discount or special promotion connected with a product that they had purchased. Those who participated in POS promotions purchased a greater quantity of alcohol than those who did not participate: for RTDs, an average of 11.5 standard drinks were purchased compared to an average of 8.9 standard drinks ( $t = 1.320$ ,  $p = 0.190$ ); beer, an average of 26.8 standard drinks compared to an average of 16.4 ( $t = 4.587$ ,  $p = 0.000$ ); and wine, an average of 16.1 standard drinks compared to an average of 13.8 ( $t = 0.924$ ,  $p = 0.357$ ) (38).

In an earlier study (Jones and Reis, unpublished data), 764 interviews were conducted with patrons exiting bottle shops; 698 were customers buying alcohol for themselves or to share with others. Very few participants spontaneously identified that they had purchased a specific type of alcohol as a result of a promotion, although 13 per cent spontaneously stated that it was due to a price reduction. When prompted, one in five stated that they chose the brand because it was on special or associated with a promotion, and one in 10 stated that they purchased a specific quantity because of a price reduction or promotion. T-tests demonstrated that special discounts and promotions were associated with significant differences in purchasing behaviour. Those who purchased a specific brand or quantity because of a price reduction reported that they purchased a significantly higher number of standard drinks (reported brand change: 23.7 versus 15.1,  $t = -5.43$ ,  $p < .001$ ; reported quantity change: 34.5 versus 15.3,  $t = -6.17$ ,  $p < .001$ ). These results suggest that alcohol POS promotions may encourage individuals to buy a greater quantity of alcohol; and that price promotions appear to be a particularly persuasive motivator for purchasing a greater number of standard drinks at one time, and for selecting a particular product.

In the Government of Western Australia Drug and Alcohol Office survey (37), one in four (25%) of the 18–29 year olds and almost one in five (18%) of 30–49 year olds reported that they drink more than planned when they buy discounted alcohol. Further, those who buy alcohol weekly or more often were considerably more likely to say they drink more than planned if they have bought cheap alcohol (30% versus 18% of the total sample).

The issue of children's exposure to POS promotions is particularly important given the growing evidence that exposure to alcohol marketing—including in-store marketing (24, 39)—is associated with earlier initiation and greater consumption among young people (40, 41), as is ownership of alcohol brand merchandise and familiarity with alcohol brands (24).

A survey of 1113 New South Wales adolescents aged 12–17 years found that 79 per cent had seen alcohol advertising in a bottle shop and that this exposure was associated with earlier drinking initiation (42). This is particularly salient in the context of promotions that encourage purchase at a liquor store co-located with a supermarket; given that many women shop for groceries with their children, any promotion that encourages them to enter a liquor store and purchase alcohol at the time of grocery shopping will increase the likelihood of children (a very vulnerable group) being exposed to alcohol marketing. Even more concerning, this also sends the message to children that alcohol is an ordinary commodity (43) that is purchased on a regular basis, just like bread and milk.

## What's the problem with the regulatory system?

Although the Liquor Promotion Guidelines apply to *all* licensed premises under the Liquor Act, it is important to note that the guidelines (3:6) state that:

A distinction can be made between promotions offering alcohol to be consumed immediately on a licensed premises and promotions offering alcohol that...may be stored for consumption later away from the premises. As a result, the extent to which each principle in this document applies to different licence types will vary accordingly.



In practice, this means that packaged alcohol outlets (bottle shops) are effectively exempt from many of the rules that apply to irresponsible promotions, based on the apparent assumption that alcohol purchased from these outlets will not be consumed immediately or in ways that cause harm. This has been the topic of much debate in recent years, reaching a peak in July 2013 in relation to the review of the Liquor Promotion Guidelines. The review was touted as an opportunity to tighten the guidelines, and particularly to address issues surrounding packaged alcohol—but, much to the dismay of many in the health and medical field, many of the clauses in the draft guidelines were watered down or removed from the final version. For example, the proposed ban on promotions that offer discounts on alcohol greater than 50 per cent has been dropped; this would have enabled the Office of Liquor, Gaming & Racing to take action against the supermarket giants in relation to their ‘shopper docket’ that provide extreme discounts on alcohol with the purchase of groceries. The draft guidelines stated all such promotions were ‘unacceptable’, whereas the final guidelines state that ‘drink cards, promotional cards, or shopper docket which encourage rapid consumption of alcohol over a short period of time (e.g. \$50 voucher redeemable between 9 pm and 10 pm)’ are not acceptable and advise that ‘harm minimisation’ measures must be applied to ‘buy one, get one free’ offers via discount vouchers and shopper docket ‘without purchase limits or suitable controls in place’ (3).

What was particularly extraordinary about the process surrounding these guidelines was that those on the public health side of the debate (such as the Foundation for Alcohol Research and Education, the Australian Medical Association and the Police Association of NSW) were not permitted to see the draft guidelines or make submissions, while liquor behemoth Campari and the two major supermarket chains (Coles and Woolworths) were allowed access to the draft guidelines and were given the opportunity to argue for major changes to the wording of the final guidelines (44, 45).

A key issue with packaged alcohol is the issue of pre-loading (drinking alcohol before going to a pub, club or other venue) (46), which means that off-premises alcohol consumption contributes to a significant proportion of the alcohol-related harm that occurs in or around alcohol-related venues. Data from the 2013 Alcohol Poll (47) show no significant difference in the tendency to pre-load between men (58%) and women (57%). However, women are more likely than men to drink more while out than before going out (61% compared to 49%). There are also no significant gender differences in reasons for pre-loading, other than that women are more likely than men to pre-load in order to socialise with friends before going out (45% compared to 37%). Wine drinkers who pre-load are most likely to do so in order to save money (44%), socialise with friends (43%) and feel relaxed (38%).

Another important issue to consider in relation to packaged alcohol is the association between (excessive) alcohol consumption in the home environment and domestic violence. There were 10,079 alcohol-related domestic assaults in New South Wales in 2011–12, an increase of 37 per cent since 2002–03 (7373 assaults). This is further reflected in the number of alcohol-related domestic assaults per 100,000 people residing in New South Wales, which increased by 25 per cent from 110.5 assaults to 138.3 assaults over the same time period (48).

This is consistent with the findings of a recent analysis of the effect of outlet density, which found a strong positive association between packaged liquor outlet density and rates of alcohol-caused chronic disease, and an association between packaged liquor outlet density and violence rates (49). A study examining the impact of alcohol availability on violence in Western Australia found that the average volume of sales in off-licence venues was significantly associated with all measures of assault, including those that occur at on-licence venues such as hotels, nightclubs and restaurants (50).

Thus, it is not reasonable to assume that promotions that encourage the purchase (and consumption) of higher volumes of alcohol are intrinsically less harmful than those at licensed venues and thus less relevant for the purposes of the Liquor Promotion Guidelines. Packaged alcohol contributes substantially to the harms associated with on-premises alcohol consumption, with people pre-loading (46), and is associated with harm when consumed by drinkers who are not going on to drink outside the home.

Shopper docket for alcohol (coupons issued by supermarkets for discount alcohol at co-owned or co-located liquor stores) are causing increasing concern. They share the problems inherent in other

POS promotions, but raise additional issues. These promotions predominantly target women (the main grocery shoppers) and tend to feature wine (predominantly consumed by women). Although males are more likely to be hazardous drinkers and are increasingly experiencing the short- and long-term health effects of excessive drinking, Australian women rank third in the world (after Uganda and New Zealand) for negative consequences of drinking, whereas Australian men rank ninth (51). The fact that the national average maternal age in Australia is 30 years, with 23 per cent of births being to mothers aged 35 and over in 2009 (52), any marketing activity that has the potential to increase alcohol consumption among women of child-bearing age has a high likelihood of placing the most vulnerable of our citizens (unborn children) at risk.

Perhaps most importantly, there is substantial evidence from Australia and overseas that exposure to alcohol marketing—including in-store marketing (24, 39)—is associated with earlier initiation and greater consumption among young people (40, 41), as is ownership of alcohol brand merchandise and familiarity with alcohol brands (24).

## What now?

There is an abundance of evidence that POS promotions increase the volume of alcohol purchased, and increasing evidence to suggest that they also increase the volume of alcohol consumed (although there is a need for more research in this area).

Price-related promotions (those that offer price reductions for multiple/bulk purchases) are prevalent in Australia, and recent research has demonstrated that they are most commonly offered by outlets attached to large supermarket chains, which also offer the highest number of promotions per store (36). This supports concerns raised by public health advocates that the increasing market share of these large supermarket chains results in a market with greater incentives for customers to purchase larger quantities of alcohol. The same study found that participation in POS promotions almost universally required the purchase of a large number of standard drinks (on average about 21 per promotion) and that this was highest in those stores that were part of the large supermarket chains.

This is related to, but in some ways more complex than, the more general issue of the relatively low price of alcohol in Australia. These strategies not only make alcohol cheaper, but in many cases provide an extremely strong incentive to purchase greater quantities of alcohol; for example, a large retail chain in July 2013 offered '50% off if you buy 4 or more bottles', thus making it substantially cheaper to purchase five bottles than to purchase three bottles.

There is some debate over how best to regulate POS promotions, and who should regulate them. In theory, complaints about alcohol POS promotions could be lodged with the Advertising Standards Board and with the Alcohol Beverages Advertising Committee, the industry's self-regulatory authorities. However, the substantial body of evidence that exists to demonstrate the ineffectiveness of these bodies in protecting Australians from inappropriate alcohol advertising suggests that such an approach would be of limited value (27–29, 53).

Thus, if we were to regulate POS promotions as a subset of alcohol advertising, it would require the establishment of an independent body with the power to monitor and regulate the nature of these communications. Consistent with calls for more effective regulation of alcohol advertising per se (23–26), this would require:

- an independent authority that is not administered by, and not funded by, the alcohol industry
- formal and ongoing monitoring of alcohol advertising (and promotions) rather than reliance on complaints being lodged by members of the public
- the power for the independent body to make enforceable decisions (such as to require removal or modification of an offending promotion)
- penalties for non-compliance.

Another option would be to revise existing regulations that govern alcohol promotions to ensure that they specifically and adequately address promotions associated with packaged alcohol. It is clear that, in most states, the regulations and codes of practice around responsible promotions are written (and applied) in such a way as to effectively exempt packaged liquor outlets, since the requirement to prove that the specific promotion results in increased consumption (not just increased purchase) would require following people into their homes. Given the increasing evidence—and, indeed, the fundamental logic—that increased purchase is associated with increased consumption, at least for some purchasers (arguably those most at risk), these regulations could be written in such a way as to prohibit promotions that encourage, or reward, increased purchase volumes. The most obvious of these are price-volume promotions; that is, promotions that function to make it as affordable, or even more affordable, to purchase a greater quantity of alcohol.

Such regulations could also include clauses designed to prohibit promotions that require the purchase of an excessive quantity of alcohol in order to obtain a desirable premium, particularly where the alcohol type is known to be particularly appealing to young people (for example, alcopops) or the premium is likely to appeal to children or young people. It is clear that such promotions serve as an inducement to (particularly young) people to purchase more alcohol than they had intended or would usually purchase.

As with the option of regulating POS promotions through alcohol advertising regulations, modifications to liquor promotion guidelines should be designed to reduce the exposure of children and young people to positive messages about alcohol. It would also be reasonable, and feasible, for such regulations to prohibit the use of promotions, or the offer of premiums, that associate alcohol with activities or behaviours that are not permitted to be linked in alcohol advertising (such as promotions that link alcohol with driving or sports).

Finally, in order for such a system to be effective, there would need to be provision for ongoing monitoring and enforcement. Licensing authorities, or their representatives, should actively monitor POS promotions, ensure that inappropriate promotions are discontinued and impose meaningful penalties for non-compliance.

Perhaps most importantly, the development—and enforcement—of regulations around POS marketing, and advertising more generally, should have as its primary motivation the best interests of the general public and the protection of children and young people. Such regulations should not be influenced by, or watered down to appease, those who stand to gain financially from (young) Australians purchasing and consuming greater quantities of alcohol.

## Conclusions

There have been rapid shifts in the nature of the retail alcohol market—including the rising market share of supermarket chains, which have substantial capacity for widespread discounting—and a diversification in alcohol promotion strategies. This occurs at the same time as community concern increases about the harms associated with excessive alcohol consumption, including substantial increases between 2004 and 2010 in Australians expressing support for increasing the price of alcohol, reducing the number of outlets and reducing trading hours (54). Governments in all Australian jurisdictions (including New South Wales) appear to be very reluctant to regulate promotions for packaged alcohol, despite growing evidence that such promotions are associated with increased purchase volume and increased consumption. There is a clear need for the development and application of an effective regulatory system for POS promotions that clearly includes packaged alcohol outlets.

## References

1. ABAC. *The ABAC Scheme: Alcohol Beverages Advertising (and Packaging) Code*. Sydney: ABAC, 2012.
2. Australian Association of National Advertisers. *AANA code of ethics*. Sydney: Australian Association of National Advertisers, 2012.
3. NSW Government Office of Liquor, Gaming & Racing. *Liquor promotion guidelines*. Sydney: Office of Liquor, Gaming & Racing, 2013.
4. Dibb S, Simkin L, Pride W, Ferrell O. *Marketing: concepts and strategies*. Boston, MA: Houghton Mifflin Company, 2001.
5. d'Astous A, Jacob I. Understanding consumer reactions to premium-based promotional offers. *European Journal of Marketing* 2002;36(11/12):1270–86.
6. Munger J, Grewal D. The effects of alternative price promotional methods on consumers' product evaluations and purchase intentions. *Journal of Product and Brand Management* 2001;10(3):185–97.
7. Howard K, Flora J, Schleicher N, Gonzalez E. Alcohol point-of-purchase advertising and promotions: prevalence, content and targeting. *Contemporary Drug Problems* 2004;31(3):561–84.
8. Brabbs C. Bottled beer beverages battle to stand out: alcohol brands are using design to make an impact in a cluttered bar. *Marketing* 2002:27–8. Accessed 11 April 2014 <<http://www.marketingmagazine.co.uk/article/139099/design-bottled-beverages-battle-stand---alcohol-brands-are-using-design-impact-cluttered-bar>>.
9. Solley S. Stand out in the pub. *Marketing* 2000:41. Accessed 11 April 2014 <<http://www.marketingmagazine.co.uk/article/71602/point-purchase-stand-pub---sam-solley-discovers-pop-material-push-drink-consumers--minds-enter-bar>>.
10. British Beer and Pub Association. *Point of sale promotions: a good practice guide for pub owners and licensees*. London: British Beer and Pub Association, n.d.
11. NSW Government Office of Liquor, Gaming & Racing. Packaged liquor licence fact sheet. Sydney: Office of Liquor, Gaming & Racing, 2010. Accessed 5 August 2013 <[www.olgr.nsw.gov.au/pdfs/L\\_FS\\_PLL.pdf](http://www.olgr.nsw.gov.au/pdfs/L_FS_PLL.pdf)>.
12. Levy D, Sheflin N. New evidence on controlling alcohol use through price. *Journal of Studies on Alcohol* 1983;44(6):929–37.
13. Coate D, Grossman M. *Effects of alcoholic beverage prices and legal drinking ages on youth alcohol use*. Cambridge, MA: National Bureau of Economic Research Inc., 1988.
14. Österberg E. Do alcohol prices affect consumption and related problems? In: Holder H, Edwards G, eds. *Alcohol and public policy: evidence and issues*. Oxford: Oxford University Press, 1995, pp. 145–63.
15. Kenkel D. Drinking, driving and deterrence: the effectiveness and social costs of alternative policies. *Journal of Law and Economics* 1993;36(2):877–913.
16. Grossman M, Chaloupka F, Saffer H, Laixuthai A. Effects of alcohol price policy on youth: a summary of economic research. *Journal of Research on Adolescence* 1994;4(2):347–64.
17. Chaloupka FJ, Wechsler H. Binge drinking in college: the impact of price, availability and alcohol control policies. *Contemporary Economic Policy* 1996;14(4):112–24.
18. Sutton M, Godfrey C. Grouped data regression approach to estimating economic and social influences on individual drinking behaviour. *Health Economics* 1995;4(3):237–47.

19. Christie J, Fisher D, Kozup J, Smith S, Burton S, Creyer E. The effects of bar-sponsored alcohol beverage promotions across binge and non-binge drinkers. *Journal of Public Policy & Marketing* 2001;20(2):240–53.
20. Babor T, Mendelson J, Greenberg I, Kuehnle J. Experimental analysis of the 'happy hour': effects of purchase price on alcohol consumption. *Psychopharmacology* 1978;58(1):35–41.
21. Kuo M, Wechsler H, Greenberg P, Lee H. The marketing of alcohol to college students. *American Journal of Preventive Medicine* 2003;25(3):204–11.
22. Bray J, Loomis W, Engelen M. Correlates of in-store promotions for beer: differential effects of market and product characteristics. *Journal of Studies on Alcohol and Drugs* 2007;68(2):220–7.
23. McClure A, Dal Cin S, Gibson J, Sargent J. Ownership of alcohol-branded merchandise and initiation of teen drinking. *American Journal of Preventive Medicine* 2006;30(4):277–83.
24. Hurtz S, Hernikson L, Wang Y, Feighery E. The relationship between exposure to alcohol advertising in stores, owning alcohol promotional items and adolescent alcohol use. *Alcohol and Alcoholism* 2007;42(2):143–9.
25. Henriksen L, Feighery E, Schleicher N, Fortmann S. Receptivity to alcohol marketing predicts initiation of alcohol use. *Journal of Adolescent Health* 2008;42(1):28–35.
26. Jones S, Donovan R. Messages in alcohol advertising targeted to youth. *Australian and New Zealand Journal of Public Health* 2001;25(2):126–31.
27. Jones S, Donovan R. Self-regulation of alcohol advertising: is it working for Australia? *Journal of Public Affairs* 2002;2(3):153–65.
28. Jones S, Gregory P, Munro G. Adolescent and young adult perceptions of Australian alcohol advertisements. *Journal of Substance Use* 2009;14(6):335–52.
29. Jones S, Hall D, Munro G. How effective is the revised regulatory code for alcohol advertising in Australia? *Drug and Alcohol Review* 2008;27(1):29–38.
30. van Bueren D, Davis J. *Young people's perceptions of alcohol advertising, in relation to the revised alcohol beverages advertising code*. Canberra: Australian Government Department of Health and Ageing, 2005.
31. King E, Taylor J, Carroll T. *Australian alcohol beverage advertising in mainstream Australian media 2003 to 2005: expenditure, exposure and related issues*. Sydney: Department of Health and Ageing, 2005.
32. Smith A, Edwards C, Harris W. Bottleshops and 'ready-to-drink' alcoholic beverages. *Health Promotion Journal of Australia* 2005;16(1):32–6.
33. Jones S, Lynch M. A pilot study investigating of the nature of point-of-sale alcohol promotions in bottle shops in a large Australian regional city. *Australian and New Zealand Journal of Public Health* 2007;31(4):318–21.
34. Jones S, Lynch M. Non-advertising alcohol promotions in licensed premises: does the Code of Practice ensure responsible promotion of alcohol? *Drug and Alcohol Review* 2007;26(5):477–85.
35. Jones S, Smith K. The effect of point of sale promotions on the alcohol purchasing behaviour of young people in metropolitan, regional and rural Australia. *Journal of Youth Studies* 2011;14(8):885–900.
36. Jones S, Barrie L, Robinson L, Allsop S, Chikritzhs T. Point-of-sale alcohol promotions in the Perth and Sydney metropolitan areas. *Drug and Alcohol Review* 2012;31(6):803–8.
37. Gardiner R, Coase P. *Cheap drinks*. Perth: Government of Western Australia Drug and Alcohol Office, 2011.

38. Jones S, Gregory P, Barrie L, Allsop S, Chikritzhs T. The influence of point-of-sale (POS) promotions on bottle shop purchases of young adults. Under review.
39. Ellickson P, Collins R, Hambarsoomians K, McCaffey D. Does alcohol advertising promote adolescent drinking? Results from a longitudinal assessment. *Addiction* 2005;100(2):235–46.
40. Anderson P, De Bruijn A, Angus K, Gordon R, Hastings G. Impact of alcohol advertising and media exposure on adolescent alcohol use: a systematic review of longitudinal studies. *Alcohol and Alcoholism* 2009;44(3):229–43.
41. Smith L, Foxcroft D. The effect of alcohol advertising, marketing and portrayal on drinking behaviour in young people: systematic review of prospective cohort studies. *BMC Public Health* 2009;9:51.
42. Jones S, Magee C. Exposure to alcohol advertising and alcohol consumption among Australian adolescents. *Alcohol and Alcoholism* 2011;46(5):630–7.
43. Babor T, Caetano R, Casswell S, Edwards G, Giesbrecht N, Graham K et al. *Alcohol: no ordinary commodity: research and public policy*. 2nd edn. Oxford: Oxford University Press, 2010.
44. Needham K. Government bows to liquor industry on discounts. *Sydney Morning Herald*. 14 July 2013.
45. Nicholls S. Sale of alcohol guidelines watered down by NSW government. *Illawarra Mercury*. 18 July 2013.
46. Wells S, Graham K, Purcell J. Policy implications of the widespread practice of 'pre-drinking' or 'pre-gaming' before going to public drinking establishments—are current prevention strategies backfiring? *Addiction* 2009;104(1):4–9.
47. Foundation for Alcohol Research and Education. *Annual alcohol poll: attitudes and behaviours*. Canberra: FARE, 2013.
48. Foundation for Alcohol Research and Education. *10 years on: an analysis of the progress made in preventing alcohol-related harms since the 2003 NSW Summit on Alcohol Abuse*. Canberra: FARE, 2013.
49. Livingston M. Alcohol outlet density and harm: comparing the impacts on violence and chronic harms. *Drug and Alcohol Review* 2011;30(5):515–23.
50. Liang W, Chikritzhs T. Revealing the link between licensed outlets and violence: counting venues versus measuring alcohol availability. *Drug and Alcohol Review* 2011;30(5):524–34.
51. Graham K, Bernards S, Knibbe R, Kairouz S, Kuntsche S, Wilsnack SC et al. Alcohol-related negative consequences among drinkers around the world. *Addiction* 2011;106(8):1391–405.
52. Australian Institute of Health and Welfare. *Australia's mothers and babies 2009*. Perinatal statistics series no. 25. Cat. no. PER 52. Canberra: AIHW, 2011. Accessed 20 November 2013 <[www.aihw.gov.au/publication-detail/?id=10737420870](http://www.aihw.gov.au/publication-detail/?id=10737420870)>.
53. Donovan K, Donovan R, Howat P, Weller N. Magazine alcohol advertising compliance with the Australian alcoholic beverages advertising code. *Drug and Alcohol Review* 2007;26(1):73–81.
54. Australian Institute of Health and Welfare. *2010 National Drug Strategy Household Survey report*. Canberra: AIHW, 2011.

# Chapter 16

## Risk-based licensing and alcohol-related offences in the Australian Capital Territory

Rebecca Mathews and Tim Legrand

On 1 December 2010, the Australian Capital Territory introduced the new *Liquor Act 2010* (the Liquor Act). A major change in the Liquor Act was the introduction of risk-based licensing (RBL), a scheme that calculates licensing fees according to venue type, occupancy and trading hours. The revenue generated from RBL fees was intended to offset costs for 10 new police officers and additional licensing regulators to enforce and administer the new Liquor Act (1). Other licensing reforms were also enacted through this legislation, including mandatory responsible service of alcohol (RSA) training, mandatory risk assessment plans for new licensees, new criminal offences for supplying liquor to intoxicated people and inappropriate promotion of alcohol, and emergency powers for Australian Federal Police ACT Policing, the local police authority in Canberra, to close premises for up to 24 hours. These additional reforms are discussed in more detail elsewhere (2).<sup>1</sup>

One year after the introduction of these reforms, a governmental inquiry found reductions in alcohol-related arrests, assaults and people taken into protective custody for intoxication of 17.6%, 6.0% and 9.7% respectively (1). However, the inquiry did not explore the extent of reductions at licensed premises in entertainment precincts after midnight.

This study explores changes in alcohol-related offences in the Australian Capital Territory since RBL was introduced, and the perceptions of police, licensees and regulators of the consequences and limitations of RBL. Specifically, it aims to determine whether there have been changes in alcohol-related offences from 2010 to 2012 overall, and in the main entertainment precincts, particularly Civic.

This is the first Australian study to evaluate the impacts of RBL on alcohol-related offences and the first evaluation of the Australian Capital Territory licensing reforms. Given the substantial costs of alcohol-related offences to health, police, justice and social services and to the economy (3), evaluating RBL has important implications for state, territory and Commonwealth governments that seek to reduce and recover these costs and improve the regulation of licensed premises.

### Why risk-based licensing?

In many jurisdictions, legislation regulates trading hours, occupancy, discounting and RSA for on-trade premises (4, 5). RBL takes the regulation of some of these factors further by using them to determine licensing fees. On-trade licensees pay fees commensurate with their likely risk of alcohol-related harm according to their trading hours, occupancy and, in some cases, their venue type and compliance with licensing legislation. Off-trade licensees pay fees according to the wholesale value of liquor sold. RBL helps to recover the policing and regulatory costs of alcohol-related incidents, with higher-risk

<sup>1</sup> This chapter is adapted from Mathews R, Legrand T. *Risk-based licensing and alcohol-related violence in the Australian Capital Territory*. Canberra: Foundation for Alcohol Research and Education, 2013.

licensees paying more than lower-risk licensees. It may also provide an incentive to modify risk factors such as trading hours and occupancy. Ontario, Canada, was the first jurisdiction to implement RBL in 2008 and 2009, followed by Queensland in January 2009, Victoria in August 2009 and the Australian Capital Territory in December 2010 (5). New Zealand is currently considering introducing RBL (6).

Although no research has evaluated the effects of RBL itself on alcohol-related offences, empirical evidence shows that the factors it typically considers independently increase the risk of alcohol-related harms. Australian and international studies have shown that assaults occur most frequently at licensed premises after midnight (7, 8). Extended trading hours increase alcohol consumption and related harms (9), while restricting trading hours, especially in problematic premises, can reduce assaults (10). High occupancy can increase violence by increasing accidental contact between intoxicated patrons (11) and by reducing the ability of staff to detect intoxicated patrons and the inclination of patrons to report incidents to police (12).

## Risk-based licensing in the Australian Capital Territory

RBL was introduced amid growing concern about the prevalence of alcohol-related problems at licensed premises (13). Before its introduction, assault-related offenders admitted to the police watch house had increased by 25% between 2005–06 and 2008–09 (14), with the proportion involving alcohol increasing from 58% to 64%. Hospitalisations for alcohol-related injury increased by 53% for males and 35% for females from 2000–01 to 2009–10 (15).

According to the Australian Capital Territory Attorney-General, 'Risk based licensing is aimed squarely at tackling community concerns about alcohol-related crime, violence and antisocial behaviour, particularly at night' (16:14). This is consistent with the harm minimisation goals in s. 10(c) of the Liquor Act to regulate the liquor industry:

- in a way that minimises harm caused by alcohol abuse, including—
  - (i) adverse effects on health; and
  - (ii) personal injury; and
  - (iii) property damage; and
  - (iv) violent or anti-social behaviour.

RBL was enacted through the Liquor Act (s. 229) and is administered by the Office of Regulatory Services. For annual liquor licence renewals, 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 80 patrons (17) (for a detailed description of the fee structure, see Mathews and Legrand (2)). For instance, a nightclub trading until 5 am and accommodating more than 350 patrons pays \$25,184 per annum. An equivalent bar pays \$16,790 per annum, while an equivalent restaurant pays \$8394 per annum. Shorter trading hours and smaller occupancies incur lower fees. For instance, a night club trading until 1 am and accommodating between 80 and 150 people pays \$8394 per annum in liquor licensing fees. An equivalent bar pays \$5595, while an equivalent restaurant pays \$2797.

The annual licence renewal fees paid by off-trade licensees are based solely on the gross liquor purchase value for the annual reporting period. These fees range from \$532 per annum for less than or equal to \$5000 gross liquor purchased, to \$27,355 per annum for in excess of \$7,000,000 gross liquor purchased.

When RBL was introduced, there were 650 liquor licences in the Australian Capital Territory, of which approximately 70% were on-trade (18). One in five on-trade licensees traded past midnight and 18% accommodated more than 350 patrons (1). Two-thirds of these large venues traded past midnight, compared to only one-third of smaller venues. Since RBL's introduction, the number of licences in the Australian Capital Territory has not changed significantly (19).



# Methodology

This mixed methods study derived quantitative findings from police-reported alcohol-related offences, and qualitative findings from interviews with key stakeholders. Where possible, the interview data was used to triangulate findings from the Australian Federal Police (AFP) ACT Policing data to assist in its interpretation, a practice called methods triangulation. This practice recognises that different methods elucidate different aspects of a research question. For this study, it enabled a more complete assessment of RBL by combining numbers of alcohol-related offences with contextual information from stakeholders at the forefront of RBL and alcohol-related offences.

## Quantitative methods

A proposal was submitted to AFP ACT Policing to access data on all offences reported in PROMIS (Police Real-Time Online Management Information System) from January 2010 to December 2012. These dates were selected because they represented the period one year before and two years after the introduction of RBL in the Australian Capital Territory. AFP ACT Policing provided de-identified unit record data for the specified date range. The offence data were coded and analysed using Statistical Package for the Social Sciences (SPSS) version 20. Although data were collected prior to the introduction of RBL, they were captured in broader text fields in PROMIS, which could not be easily extracted for reporting in line with the requirements of this study. Consequently, data were only available from 1 May 2010 to 31 December 2012.

There were three stages of data analysis. First, descriptive statistics on the number and proportion of all offences involving alcohol were derived. Next, alcohol-related offences considered relevant to licensed premises and RBL were selected, using criteria outlined elsewhere (2). For the offences relevant to RBL, chi-square analyses were performed to explore associations between the time, suburb and location where offences were reported. These variables were coded according to methods used in a recent study of alcohol-related violence in the Australian Capital Territory (14).

Finally, we explored changes between 2010 and 2012 in the proportion of all offences involving alcohol and those relevant to RBL. Chi-square analyses were performed to look for relationships between the year and the suburb, time and location that offences were reported.

## Qualitative methods

Semi-structured interviews lasting up to one hour were conducted with two licensees, three police officers experienced in intervening in alcohol-related incidents, and two staff from the Office of Regulatory Services (n = 7). Snowball sampling (20) was used to recruit interviewees.

The interviews sought participants' views on the impacts of RBL on licensees and alcohol-related offences and the risk factors it overlooks. The interviews were digitally recorded and coded into themes.

## Study limitations

The study findings are limited by the availability and reliability of the AFP ACT Policing data. Data on the involvement of alcohol in offences were only available from May 2010, so analyses were restricted to May to December each year. Consequently, we could not examine alcohol-related offences before May 2010 and excluded some peak times for alcohol-related offences, such as New Year's Day and Easter.

Also, because AFP ACT Policing does not document offenders' place of last drink, it was not possible to reliably attribute offences to licensed premises. Furthermore, the AFP ACT Policing data do not identify whether the victim, the offender or both were intoxicated during alcohol-related offences. The reliability of the reporting time for alcohol-related offences is also limited; it may reflect the time when the offence occurred or the time when the victim reported it to police, which may have been days after it occurred.

The representativeness of the qualitative data is limited by the small sample interviewed. A larger sample was beyond the scope of this study. Nevertheless, this study provides an important preliminary exploration into stakeholders' perceptions of RBL, which future work can build upon.

## Results

Quantitative results are presented in two sections. The first section describes the number and types of alcohol-related offences occurring in the Australian Capital Territory from 2010 to 2012. The second section describes the changes from 2010 to 2012 in the proportion of offences that involved alcohol and were relevant to RBL. Sensitivity analyses included the offences reported in January to April in 2011 and 2012: these did not substantively change our results. Thus the findings for May to December of each of the three years are reported.

### Alcohol-related offences relevant to risk-based licensing

From 1 May to 31 December in 2010, 2011 and 2012, in total, 62,480 offences were reported by AFP ACT Policing. Of these offences, 7304 (11.7%) involved alcohol; 3421 (46.8%) of these alcohol-related offences were considered relevant to RBL in that they resulted in or had the potential to result in personal injury, property damage, violence or anti-social behaviour. Among those offences considered relevant to RBL, common assault was the most prevalent (19.1%), with trespass, theft and property damage together accounting for a further 20.7%. Traffic incidents predominated among those offences not considered relevant to RBL, accounting for 44.8% of all alcohol-related offences. Alcohol-related offences relevant to RBL are the focus of the remaining quantitative results. More detailed information regarding the offences that were and were not considered relevant to RBL is published elsewhere (2).

Alcohol-related offences relevant to RBL were most prevalent in Civic, the main entertainment precinct, where 25% of all these offences were reported. In Civic, the majority of offences were reported in public places (61%) and licensed premises (27%), compared to the rest of the Australian Capital Territory, where most offences occurred in public places and domestically. Civic also had the highest prevalence of offences from midnight to 6 am (77%), while in other suburbs proportionally more offences occurred earlier in the evening. More detail on the suburb, location and time of these offences is published elsewhere (2).

### Changes in alcohol-related offences from 2010 to 2012

Table 16.1 presents the number and percentage of all offences reported in 2010, 2011 and 2012 disaggregated by whether they involved alcohol and were relevant to RBL.

Table 16.2 presents the absolute percentage changes in the number of these offences reported each year from 2010 to 2012. It shows that each year there were absolute declines in the total number of alcohol-related offences and in those relevant to RBL. From 2010 to 2011, all alcohol-related offences declined by 0.8% (from 2590 to 2569) and those relevant to RBL declined by 9.9% (from 1290 to 1162). There were larger declines in these offences from 2011 to 2012, when the total number of alcohol-related offences declined by 16.5% and those specifically relevant to RBL declined by 16.6%.

Because the declines in alcohol-related offences occurred in the context of declines in all offences reported by police, we also looked at the proportion of all offences involving alcohol each year and whether this changed over the three years. As shown in Tables 1 and 2, we found that as a proportion of all offences, alcohol-related offences significantly increased from 10.9% in 2010 to 12.8% in 2011 (an increase of 1.8%). However, there was no significant change in the proportion of alcohol-related offences relevant to RBL over this period. From 2011 to 2012, the proportion of offences involving alcohol significantly declined by 1.3% (from 12.8% to 11.5%), and those relevant to RBL declined by 0.6% (from 5.8% to 5.2%). These trends persisted after adjusting for changes in the Australian Capital Territory population over the three years.<sup>2</sup>

---

<sup>2</sup> Given space restrictions, these analyses are not presented.

**Table 16.1: Changes in the proportion of offences involving alcohol, including offences relevant to RBL, 2010–12**

	2010		2011		2012	
	N	% of all offences	N	% of all offences	N	% of all offences
All offences	23,704	100	20,133	100	18,643	100
Offences not involving alcohol	21,114	89.1	17,564	87.2	16,498	88.5
All alcohol-related offences	2,590	10.9	2,569	12.8	2,145	11.5
Alcohol-related offences relevant to RBL*	1,290	5.4	1,162	5.8	969	5.2

\* Includes common assault, sexual assault or indecency without consent; homicide/murder and attempted murder; grievous bodily harm; fights in public places; weapons incidents; property damage; burglary, theft, robbery or stolen motor vehicle; trespass/breach; offensive, threatening, harassing or endangering behaviour; obstructing or resisting an official.

**Table 16.2: Absolute and proportional changes in offences, 2010–12**

	Absolute change in offences			Percentage change in the proportion of all offences		
	2010–11	2011–12	2010–12	2010–11	2011–12	2010–12
				% change (95% CI)	% change (95% CI)	% change (95% CI)
All offences	-15.1%	-7.4%	-21.4%			
Offences not involving alcohol	-16.8%	-6.1%	-21.9%	-1.9* (-2.4, -1.2)	+1.3* (+0.6, +1.9)	-0.6 (-0.1, +1.9)
All alcohol-related offences	0.8%	-16.5%	-17.2%	+1.9* (+1.2, +2.4)	-1.3* (-1.9, -0.6)	+0.6 (-0.1, +1.2)
Alcohol-related offences relevant to RBL†	-9.9%	-16.6%	-24.9%	+0.3 (+0.8, -0.1)	-0.6* (-0.1, -1.0)	-0.2 (-0.7, +0.2)

\* The % reduction was statistically significant as the 95% confidence intervals did not cross 0.

† Includes common assault, sexual assault or indecency without consent; homicide/murder and attempted murder; grievous bodily harm; fights in public places; weapons incidents; property damage; burglary, theft, robbery or stolen motor vehicle; trespass/breach; offensive, threatening, harassing or endangering behaviour; obstructing or resisting an official.

From 2010 to 2012 there were smaller declines in alcohol-related offences relevant to RBL in Civic than elsewhere. In Civic, these offences declined by 13% from 2010 to 2012 but increased by 8% from 2011 to 2012. Furthermore, the proportion of all such offences reported in Civic increased significantly (by 4%) from 2010 to 2012 (95% CI = 0.7% to 7.7%), largely due to a 6.5% increase from 2011 to 2012 (95% CI = 2.9% to 10.3%). Further detail on the specific changes in alcohol-related incidents reported at other Canberra suburbs is reported elsewhere (2).

From 2010 to 2012 alcohol-related offences declined across all times, locations and offence types. There were no significant relationships between any of these three variables and the year that offences were reported, suggesting consistent declines each year from 2010 to 2012 across all three variables.

## Qualitative findings

The primary themes from the interviews were the consequences of RBL for licensees and alcohol-related offences, the factors that RBL overlooks and the ways it could be improved. These themes are

elaborated with examples and direct quotes, where appropriate, below. The quotes are those of the people interviewed and are not representative of all licensees, police and/or regulators.

### **Consequences of RBL for licensees**

The RBL framework did not seem to provide licensees with much incentive to modify trading hours, venue type or occupancy. Regulators said a small but insignificant number of licensees shortened their trading hours or changed to bring your own (BYO) venues in response to RBL. One licensee 'seriously considered changing their trading hours or occupancy' and 'would never open another cocktail bar because of the restrictions'. The other licensee said he/she would never change the trading hours or occupancy, as this would be permitting 'a nanny state' and 'things only get going at 11 pm'.

The increased fees and occupancy restrictions imposed by RBL were thought to have financial implications for some licensees, particularly smaller venues. One licensee thought that many small venues would close if RBL continued and felt it should better relate to licensees' size and capacity to pay. The occupancy restrictions imposed by RBL had been bad for this licensee's business: 'The strict control on capacities had a massive effect on our business financially. It was unwarranted and we asked the authorities to review it. We went from 140 to 110 [in capacity] and you notice that on a Saturday night, and the customers notice it...'.

### **Consequences of RBL for alcohol-related offences**

All interviewees recognised the benefits of the additional alcohol prevention police who were funded by RBL, and those police and regulators interviewed believed this had reduced alcohol-related offences. However, one police officer suggested this reduction may have been the result of fewer police officers being 'on the beat' at some times.

The additional police were thought to have changed the policing of alcohol-related offences in the following ways:

- earlier police intervention in alcohol-related incidents and more ownership of the issue by police (police)
- better working relationships and more contact between licensees, police and Office of Regulatory Services (police and regulators)
- policing gaining more 'intelligence' about clubs and pubs (police)
- increased policing of licensed venues overall, but concentrated in Civic (licensees).

Although licensees acknowledged the increased policing of their venues since the introduction of RBL, they were not convinced that RBL had been beneficial. One licensee thought the increased fees were simply a way for the government to increase revenue. Both licensees felt that RBL had a number of unintended consequences that had contributed to more violence, including:

- increasing the price of drinks on-trade and thereby increasing pre-loading and illicit drug use (licensees)
- 'Pushing some small venues out of the market' and 'forcing more people to go to the larger venues where intermingling was more likely to cause problems' (one licensee)
- 'More heavy-handed security in venues' (one licensee).

### **Factors that RBL overlooks**

Pre-loading, the number and density of licensed premises, the simplicity of the criteria used to determine licensing fees, and the lack of review and appeal processes for fees were cited as the main issues the informants had with RBL.

When asked directly about whether RBL underestimates the effects of pre-loading, two police officers interviewed and both licensees agreed. One police officer said the increased pre-loading was reflected in more consumption of alcohol in public. Licensees thought that off-trade licensees and BYO restaurants were the source of this pre-loading and needed to pay higher fees and have mandatory RSA. Some police officers interviewed thought that licensees could better address pre-loading by screening out highly intoxicated people at the door, thereby enabling earlier police intervention.

## Discussion

This study showed that there have been declines in the absolute number of all offences, including those involving alcohol, since the introduction of RBL in December 2010. From May 2010 until December 2012, all offences declined in the Australian Capital Territory by 21% in absolute terms and alcohol-related offences relevant to RBL declined by 25%. For offences involving alcohol, including those specific to RBL, the majority of this decline occurred from 2011 to 2012 (by 16.5% and 16.6% respectively). Also, from 2011 to 2012, alcohol-related offences relevant to RBL declined by a larger magnitude than offences not involving alcohol.

Because the decline in alcohol-related offences occurred in the context of declines across all offences, this study also examined changes in the proportion of all offences involving alcohol from 2010 to 2012. We found that as a proportion of all offences, alcohol-related offences increased by 1.9% from 2010 to 2011 but those relevant to RBL did not change significantly. Then, from 2011 to 2012, the proportion of all offences involving alcohol declined by 1.3% and those relevant to RBL declined by 0.6%. One possible interpretation for these findings is that in the first year of RBL (2011), there was more police intervention with and reporting of offences due to the additional police available. Then, in the second year of RBL (2012), there were fewer offences because RBL and the other licensing reforms became more embedded and patrons adapted to the greater police presence in licensed premises. However, it is inherently difficult in any study relying solely on police-reported offence data to determine if a change in offences represents a change in policing or a change in offending behaviour (21). Further studies that also examine hospitalisations for alcohol-related assaults over this period would help to clarify this.

Since the introduction of RBL, alcohol-related offences have declined at all times and locations. Yet there were smaller declines in Civic than in other parts of the Australian Capital Territory. In fact, the proportion of all alcohol-related offences relevant to RBL reported in Civic increased significantly from 2010 to 2012. This may reflect greater police presence in Civic leading to earlier intervention with offences but also, potentially, more reporting of offences. However, it may also reflect an increase in the density of on-trade liquor outlets during this time. Further studies of changes in outlet density in the Australian Capital Territory over this period would help to clarify this.

## Summary of qualitative findings

All interviewees agreed that the additional police for alcohol prevention funded by RBL had benefited the Australian Capital Territory, and police and regulators felt that it had enabled earlier intervention with alcohol-related offences and better working relationships between police, regulators and licensees. Licensees were less convinced that RBL was beneficial and felt that its impacts were concentrated in Civic.

Licensees also felt there were some unintended consequences of RBL. Chief among these were that RBL has increased the price of alcohol on-trade and made pre-loading a more economical choice. When asked directly about whether RBL overlooks the issue of pre-loading and off-trade venues, licensees and most police interviewed agreed.

The number and density of licensees was another commonly cited oversight. Some also thought that licensing fees should consider licensees' compliance history, location, clientele, risk management and pricing, and should be reviewed annually.

It remains unclear if RBL has encouraged many licensees to change their trading hours or occupancy limits, as no data on this are available. Licensees thought RBL disadvantages smaller venues and would push many of these out of the market. However, these claims were not substantiated by licence regulators, who felt that RBL had minimal effects on trading hours or occupancy limits. Furthermore, the total number of on-trade licensees has not changed significantly since RBL's introduction.

## Policy implications and future directions

RBL has coincided with declines in alcohol-related offences throughout the Australian Capital Territory. This trend was corroborated by almost all interviewed, who felt that RBL had benefitted the Australian Capital Territory, particularly in providing more police resources for the prevention of alcohol-related offences. It is inherently difficult to demonstrate that a single policy intervention is directly and independently responsible for a population-level change, such as a decline in alcohol-related offences. However, a good case can be made for the continuation of RBL. Aside from the fact that stakeholders believe RBL benefits public health and safety, RBL helps to recover the costs of alcohol prevention policing in a way that ensures that the venues with the most risk factors pay the greatest share of these costs. Furthermore, there is no evidence that RBL has been detrimental to the Australian Capital Territory liquor licensing market in that there has been no significant change in the number of liquor licences since its introduction.

## References

1. ACT Government Justice and Community Safety Directorate. *Final report: review of liquor licensing fees*. Canberra: ACT Government, 2011.
2. Mathews R, Legrand T. *Risk-based licensing and alcohol-related violence in the Australian Capital Territory*. Canberra: Foundation for Alcohol Research and Education, 2013.
3. Collins D, Lapsley H. *The costs of tobacco, alcohol and illicit drug abuse to Australian society in 2004/05*. Canberra: Australian Department of Health and Ageing, 2008.
4. Trifonoff A, Andrew R, Steenson T, Nicholas R, Roche A. *Liquor licensing legislation in Australia: part 1: an overview*. Adelaide: Flinders University, National Centre for Education and Training on Addiction (NCETA), 2011.
5. Allen Consulting Group. *Alcohol-related harm and the operation of licensed premises*. Melbourne, 2009.
6. Ministry of Justice New Zealand. *Establishing a new fee regime for the alcohol licensing system: a public consultation paper*. Wellington: Ministry of Justice, 2013.
7. Jochelson R. *Crime and place: an analysis of assaults and robberies in inner Sydney*. Sydney: NSW Bureau of Crime Statistics and Research, 1997.
8. Briscoe S, Donnelly N. Temporal and regional aspects of alcohol-related violence and disorder. *Alcohol Studies Bulletin* 2001;1(May).
9. Stockwell T, Chikritzhs T. Do relaxed trading hours for bars and clubs mean more relaxed drinking? A review of international research on the impacts of changes to permitted hours of drinking. *Crime Prevention & Community Safety* 2009;11(3):153–70.
10. Jones C, Kypri K, Moffatt S, Borzycki C, Price B. The impact of restricted alcohol availability on alcohol-related violence in Newcastle, NSW. *Crime and Justice Bulletin: Contemporary Issues in Crime and Justice* 2009;137(Nov.).
11. Green J, Plant MA. Bad bars: a review of risk factors. *Journal of Substance Use* 2007;12(3):157–89.

12. Doherty SJ, Roche AM. *Alcohol and licensed premises: best practice in policing: a monograph for police and policy makers (NDLERF)*. Payneham, SA: Australasian Centre for Policing Research, 2003.
13. ACT Government Justice and Community Safety Directorate. *Review of the Liquor Act 1975—discussion paper*. Canberra: ACT DJCS, 2008.
14. Smith L, Morgan A, McAlamney A. *Policing licensed premises in the Australian Capital Territory*. Canberra: Australian Institute of Criminology, 2011.
15. ACT Government Department of Health. *Australian Capital Territory Chief Health Officer's report 2012*. Canberra: ACT Department of Health, 2012.
16. Standing Committee on Justice and Community Safety. *Inquiry into liquor fees and subordinate legislation*. Canberra: ACT Government, 2012.
17. ACT Parliamentary Counsel. *Liquor (fees) determination 2013*. Accessed 5 August 2013 <[www.legislation.act.gov.au/di/2013-116/current/pdf/2013-116.pdf](http://www.legislation.act.gov.au/di/2013-116/current/pdf/2013-116.pdf)>.
18. Trifonoff A, Andrew R, Steenson T, Nicholas R, Roche A. *Liquor licensing legislation in Australia: part 3: police expectations and experiences*. Adelaide: Flinders University, National Centre for Education and Training on Addiction (NCETA), 2011.
19. ACT Government Office of Regulatory Services Department of Justice and Community Safety. *Liquor licence public register*. Canberra: Office of Regulatory Services, 2013.
20. Lewis-Beck MS, Bryman A, Liao TF. *SAGE encyclopaedia of social science research methods*. SAGE Knowledge, 2004. Accessed 16 January 2014 <<http://dx.doi.org/10.4135/9781412950589>>.
21. O'Brien RM. Police productivity and crime rates: 1973–1992. *Criminology* 1996;34(2):183–207.

# Chapter 17

## Liquor accords: do they work?

Elizabeth Manton

A 'liquor accord' in the Australian context means a voluntary agreement between eligible parties such as licensees, police, local government, the director of the liquor licensing body, relevant state government agencies, representatives of commercial interests in the relevant local area, representatives of a community or residents' group with an interest in alcohol-related harm or the amenity of the relevant local area, and any other relevant party. Some of the earliest liquor accords were community-driven initiatives, while others focused on an agreement between licensees and local police (1, 2). Police or local government often play an active role in coordinating the accords (3). The essential aim of a liquor accord is to reduce alcohol-related harm (1:47), although it has been noted that the focus is often on dealing with individual 'troublemakers' (for example, by banning them from all local pubs), rather than on steps that might reduce licensees' profits (4).

Liquor licensing is undertaken on a state or territory basis in Australia, so any legislative provisions for such accords are codified in the state and territory liquor Acts as listed in Chapter 2. By 2012 liquor accords were specifically mentioned in New South Wales, Northern Territory, Queensland, Victorian and Western Australian liquor licensing legislation. The goals of liquor accords, as expressed in s. 131 of the *Liquor Act 2007* (NSW), for example, are as follows:

A local liquor accord means any code of practice, memorandum of understanding or other arrangement that:

- (a) affects the supply of liquor, the opening and closing of licensed premises or other aspects of the management of or conduct of business on licensed premises, and
- (b) is entered into, in accordance with this Part, for the purpose of eliminating or reducing alcohol-related violence or anti-social behaviour or other alcohol-related harm.

Although the wording varies between jurisdictions, three main themes are consistently represented: (1) multiple partners to a voluntary agreement, (2) responsible service of alcohol in licensed premises and (3) reduction or minimisation of alcohol-related harm.

An overview of measures that might be adopted in a liquor accord is given in the liquor licensing legislation. Measures include authorising or requiring a licensee to stop serving liquor on the licensed premises (responsible service of alcohol and/or banning orders); restricting the public's access to the licensed premises (for example, by allowing or requiring the licensee to close earlier than their licence prescribes); prohibiting or restricting the use of glass containers; maintaining an incident register; installing and operating closed circuit television or other security devices and/or providing security staff; or charging a particular price for alcohol (s. 134 of the NSW *Liquor Act*, s. 120C of the Northern Territory *Liquor Act* and s. 146B of the Victorian *Liquor Control Reform Act 1998*). However, this list does not prescribe the detailed ways in which individual liquor accords identify and introduce location-specific programs, some of which are covered later in this chapter.



Liquor accords have been adopted widely since their introduction in the early 1990s in Victoria and New South Wales. By 2013 there were more than 150 in New South Wales (5), more than 100 in Queensland (6), 76 in Victoria (7), 12 in South Australia (8) and at least two in the Northern Territory (9), and they are active throughout most of Western Australia (1). As an example of the enthusiasm shown towards them, the New South Wales Government has a special Liquor Accord Delivery Unit, which is committed to having 'an effective and sustainable network of liquor accords across the state' (10) and actively works with licensees and local communities to achieve this. New South Wales also has several precinct liquor accords (PLAs) in designated late-night entertainment precincts, and membership of, and active participation in, these accords is mandatory for the venues within the PLA boundary. Beyond PLAs, New South Wales has taken the further step of terminating the Kings Cross Precinct Liquor Accord and replacing it with special legislative provisions that apply only to the Kings Cross precinct (11). The Queensland Government is also committed to achieving a network of liquor accords across the state (12).

However, evaluations of accords show only limited positive outcomes, with no evidence to suggest any long-term impact on levels of alcohol-related problems (13:320). This chapter examines these evaluations (as available in the literature) and discusses possible reasons for the popularity of liquor accords. This latter analysis is based on an examination of selected liquor accord overview documents and liquor accords. The documents that were studied are listed in the appendix. The documents were thematically analysed using NVivo software, looking, in particular, at the objectives and evaluation of the accords. Since there are hundreds of liquor accords, this analysis is not complete; nevertheless, certain conclusions can be drawn.

## Evaluations of liquor accords

Liquor accords, or their equivalent, were introduced in Australia in the early 1990s. Similar schemes were introduced in the United Kingdom under the name of PubWatch (4). Lang and Rumbold (2) evaluated three of these early accords after several years of operation: the West End Forum Project in Melbourne, the Surfers Paradise Safety Action Project and the Geelong Local Industry Accord. The results were mixed. The first two accords effectively ceased functioning when the funding for project officers ended. In contrast, the Geelong accord commenced in 1993 and was still operating in late 1996, having successfully contributed to a reduction in violent assaults. Police enforcement and the level of commitment by the police officer charged with liquor licensing contributed to this success. The ongoing engagement by the licensees was a critical factor, and there were no external commercial pressures from nearby licensees who had not signed up (as was experienced in the West End Forum, for example). However, Miller et al. (14), in a follow-up evaluation of the Geelong accord, as well as many other interventions, concluded that none of the interventions were associated with reductions in alcohol-related assault or intoxication in Geelong, either individually or when combined (see also Chapter 21 in this book).

Following implementation of the Surfers Paradise Safety Action Project in 1992–93, this model was replicated elsewhere in Queensland in Cairns, Townsville and Mackay in 1995–96 and evaluated by Hauritz et al. (15). Although the authors reported a decline of 56 per cent in all aggressive and violent incidents, and a decline of at least 75 per cent in physical assaults, they noted that conclusions concerning direct causality arising from the interventions could not be drawn (15:512). In particular, the authors noted that they had been unable to attract sufficient funding to achieve sufficiently large sample sizes for meaningful statistical analysis (15:547).

In Western Australia the Fremantle Accord was implemented in 1996 but evaluators found no evidence of significant reductions in any of the alcohol-related harm indicators (1:52). Even as the accord was hailed a success by both the City of Fremantle and the police, there was little objective evidence of its having achieved its principal objective of a safer Fremantle (16).

In addition to formal evaluations of liquor accords, such as those mentioned above, there is evidence that further evaluation is taking place, even if it is not readily accessible, and that partial evaluation is also taking place as specific projects introduced under the auspices of a liquor accord are evaluated. For example, in Queensland, the Mooloolaba Liquor Accord won a Local Government Managers Australia (Queensland) award for excellence in 2011; it was submitted that since 2007, when the liquor accord started, 'there has been a decrease in alcohol related crime and assaults in Mooloolaba by 70% with a decrease of 38% across the Sunshine Coast region' (17). No evidence is easily available to check this claim, but it is assumed that some form of evidence was submitted. Whatever the basis for the award, winning such an award enhances the reputation of liquor accords in general.

Other programs have been introduced under the auspices of local liquor accords, and claims are made about the effectiveness of these programs. For example, the Condobolin Liquor Accord (in a rural New South Wales community) encouraged people to leave their cars at home before visiting a club or pub and to use the local taxi company under a managed scheme. During a 16-week trial, more than 300 people used the scheme. The success of the scheme, which won the Local Government Excellence in Road Safety Award at the Institute of Public Works Engineering Australia (NSW Division) Conference, was reported as follows:

Police reported that there were less cars parked in the [central business district] area of town on Friday and Saturday nights whilst the scheme was operational and up to two months after its implementation. Police figures show a 54% reduction in drink driving offences detected when comparing the results of phase one to phase two. The scheme has a demonstrable impact on lowering the crash risk and detected drink driving offences (18).

Again, winning an award raises the profile of such programs and the liquor accords under which they are initiated.

An evaluation of another specific program outlines ongoing implementation difficulties and evaluation limitations. The Responsible Service of Alcohol in Schools Program, titled 'Think the Drink', has been run on an annual basis by the Eurobodalla Liquor Accord since 2007. Think the Drink is an education and awareness program targeted at all Year 12 students attending secondary schools in Eurobodalla. It provides subsidised accreditation in the responsible service of alcohol, and students who participate in the program attain a Responsible Service of Alcohol certificate upon reaching their 18th birthday. At the completion of the 2010 program, 909 students had undertaken the program over a four-year period. One of the medium- to long-term outcomes chosen to determine the success of the Think the Drink program was the reduction of alcohol-related crime throughout Eurobodalla. Although some statistics were provided in an evaluation report, the evaluators noted that further extrapolation of the data was required before an informed assessment could be made about whether the medium- to long-term outcomes were being met; it was yet to be determined from where or by whom juveniles were obtaining alcohol, and whether other contributing factors existed (19).

Failure to comprehensively evaluate the effectiveness of liquor accords has been a common feature since their introduction. The West End Forum Project in Melbourne is an example of an accord that failed to document aims and outcomes, to develop relevant performance indicators, or to set up appropriate data collection and a suitable evaluation methodology (2:809–10). This made the effect of the accord impossible to evaluate.

A further problem arises when a liquor accord is just one of many strategies concurrently introduced, as noted by Miller et al. (14). It is difficult to evaluate a local liquor accord when a variety of state-based strategies, such as Hassle Free Nights and high-risk venue restrictions, are also being implemented. At other times the liquor accord is just one element of a far wider local strategy. For example, the East Gippsland Alcohol and Other Drugs Action Plan (20) lists the support and extension of liquor accords as just one action in its strategy to reduce the provision of alcohol to minors. Similarly, the Port Augusta Alcohol Management Plan lists the Port Augusta Liquor Accord Steering Committee as just one in a long list of contributors to its far broader grouping, which includes the Aboriginal Affairs and Reconciliation Department, Department of Health and Ageing, Australian Hotels Association,

Port Augusta City Council, Clubs SA, Housing SA, Families SA, Drug and Alcohol Services SA, South Australian Police, the Salvation Army, SA Ambulance and Port Augusta Youth Support Service (21). Alcohol Management Plans are considered separately in the next chapter.

## The importance of evaluation

Evaluation has been recognised as being critical to the ongoing effectiveness of an accord. Advice on how to address this has been offered (22):

An evaluation will help address both the strengths and weaknesses of the Accord, to help you determine any areas that need alterations. A good way of evaluating your Accord may include calling your stakeholders. For example, contacting a licensee and getting feedback or asking the local police if there has been a reduction in alcohol-related offences. The evaluation process should be a formalised process by way of developing agreed standards and leading indicators.

Similarly, the Alcohol and other Drugs Council of Australia (ADCA), in a submission to the Australian Competition and Consumer Commission (23), noted that it:

believes that evaluation mechanisms should be inherent in any liquor accord from as early on as possible. Research shows how important evaluation of community-based projects is since without formal evaluation, information about and evidence for required modifications in the project are not available. Evaluations conducted in the past can further inform liquor accords being set up in the future and duplication of mistakes could be avoided.

ADCA considers it vitally important that policy and programs at all levels are informed by comprehensive evidence and urges governments at all levels to resource the collection and evaluation of data to inform best practice as well as policy and program development. It is, however, not the compilation of data alone which is important, but the subsequent actual evaluation of this data to inform policy development.

It is not that liquor accords do not include such intentions. For example, many of the South Australian liquor accords identify the need to develop benchmarks in order to assess the effectiveness of the accord, and the need to periodically review and evaluate the effectiveness of the accord in achieving its purposes, although no further details are provided in the accord (24). The Adelaide Liquor Accord (25:7) has a more detailed approach:

The effectiveness of the Accord will be monitored by its Members through a range of indicators that will be reported on at Accord meetings. The indicators include:

- a. Participation,
- b. Problems addressed,
- c. Police information / data about incidents in particular precincts, and
- d. Drug and alcohol-related harms (ambulance carries, Accident and Emergency presentations, hospital admissions).

The Accord will be evaluated within two years of its endorsement to assess its value and impact, including the proportion of eligible Members who sign up and attend Accord meetings.

However, it is not known if results such as these have been determined.

The Fremantle Accord notes that 'Evaluation of the Accord is important in order to demonstrate long-term benchmarks and to justify funding and membership' (26:12). However, it then suggests that data collection could include resident and business surveys and collection of police data, without providing any more detail.

The Geelong accord provides detailed key performance indicators (KPIs) for assessing its effectiveness. The accord is overseen by a Steering Committee comprising Victoria Police, the City of Greater Geelong, a representative from the state liquor licensing office and three representatives from licensed premises. The Steering Committee monitors and evaluates the progress of the accord against the following KPIs (27:3):

1. A reduction in alcohol-related crime and anti-social behaviour;
2. An increase in the number of people who perceive Central Geelong to be safe; and
3. Enhanced relationship between licensees, local government, local police and Liquor Licensing Commission.

Perhaps more importantly, the accord provides detailed self-audit checklists designed to assess the effectiveness of the commitment of licensed premises to achieving each of these KPIs (27). It is not known whether these checklists are being actively used.

## Why are liquor accords so popular?

The analysis above shows that evaluations demonstrating that liquor accords reduce alcohol-related harm are difficult to obtain. Those that have been formally evaluated and made available through the literature do not demonstrate a high level of success in reducing alcohol-related harm, although some partial successes are claimed for programs introduced under the auspices of a liquor accord. So why are liquor accords so popular that they are being targeted for introduction across whole states?

One of the evaluation proposals in the section above outlines KPIs that go beyond alcohol-related harm. Three extra assessment indicators are introduced: participation in accords, perceptions of safety and improved relationships between members of the liquor accord. To further understand the extent to which this expansion of objectives is happening, a range of liquor accord overview documents and liquor accords was examined in more detail (see the appendix to this chapter). Close examination of these documents reveals a wide range of other objectives beyond the broad objectives summarised in the introduction to this chapter. Sometimes the objectives are just an expansion of these broad objectives, as follows:

- reduce specific alcohol-related harms
  - » reduce alcohol-related crime
  - » reduce alcohol-related road trauma
  - » encourage responsible consumption of alcohol by patrons
  - » reduce underage drinking
  - » reduce economic and social alcohol-related costs to the community
- develop strategies to manage difficult patrons
- improve safety and amenity (of venue and community)
  - » provide safe and enjoyable venue
  - » provide safe, secure, vibrant entertainment district
  - » provide safer community and improved local amenity.

However, at other times the objectives represent a new perspective about the function of the liquor accords. Five new broad objectives have been identified and are listed below.

1. Promote greater self-regulation:
  - achieve objectives without resorting to regulation, enforcement and court sanctions
  - remain unrestrictive in terms of free enterprise.

An inquiry into the Liquor Licensing Commission in Victoria found that the excessively slow process of considering offences when policing the Liquor Control Act 1987 resulted in Victoria Police becoming

actively involved in establishing alternative methods to control violence in licensed premises and alcohol abuse. The Geelong Local Industry Accord was listed as one such method (28:99). Lack of enforcement by police has been identified elsewhere as one factor that explains why reduction of alcohol-related harm as a result of liquor accords is rare (29).

2. Improve perception of safety and amenity:
  - the improved perception of safety and amenity broadens the scope of evaluation and the potential for an accord to be judged a 'success', even while actual crime or assault indicators have not shifted.
3. Improve relationships between members of the liquor accord:
  - encourage solutions based on consensus
  - encourage community engagement
  - enhance cooperation, communication and liaison between participants of the accord
  - enhance community cooperation and understanding
  - provide a proactive forum to discuss and resolve issues
  - sign up other licensees to the accord.

An update of the Fremantle Accord noted, 'We believe the Accord has been, and can continue to be, a successful initiative due to the continued environment of joint cooperation by all involved' (26).

4. Foster and promote innovation and appropriate local strategies.
5. Improve liquor licensee management practices (which is good for business):
  - encourage best management practice by licensees
  - improve licensees', managers' and staff knowledge of legislative obligations
  - improve compliance with liquor licensing laws

Improved management practices are good for business and:

- enhance local reputations for concerned and active licensees
- improve the business environment.

None of these new objectives rely on a reduction in alcohol-related harm as the outcome to measure effectiveness of the liquor accord. Their adoption as objectives of liquor accords makes it easier for a liquor accord to be judged a 'success'. It is proposed that this wide expansion of achievable objectives is a leading factor behind the popularity of liquor accords.

## Conclusions

Hawks et al. (16) noted in 1999 that because the retail liquor industry is very competitive, the voluntary nature of liquor accords will always limit their likely effectiveness in reducing alcohol-related harm. They note that they can only be effective when complemented by mandatory training of bar staff and enforcement of liquor Acts.

Chikritzhs (13:320) has also noted that liquor accords are stronger in their 'development of local communication networks, facilitation of local input, a sense of local "control," and improving public relations through open negotiations, than in the actual reduction of harm'. This assessment aligns with three of the five new liquor accord objectives identified above.

Liquor accords are 'successful' because the objective measures of their success have expanded to include factors other than harm reduction. However, the available evidence to back up these claims is not readily available. The push to continue the introduction of liquor accords must grapple with these factors: that their success is being measured by something more than harm reduction; that evaluation continues

to be poorly defined and even more poorly reported; and that any program that is based on voluntary participation is bound to have limited outcomes in such a competitive industry as the alcohol industry.

Notwithstanding these limitations, liquor accords are popular because they give the appearance of doing something, while not interfering with the licensees' trade. They are popular because they meet a need arising from inadequate legal enforcement of the provisions of the liquor licensing legislation. And they are popular because they provide a focus for community development and bring communities together. However, a far more direct assessment of the potential of liquor accords to limit harm has been provided by Goldflam (30:40), who does not mention liquor accords at all when discussing the most effective measures that could be taken: 'So what do we do about it? We make it less readily available. This may not be very popular, but it works. Shorter hours. Fewer outlets. Higher prices. A dollar a drink. A grog free welfare payday.'

These recommendations probably get to the heart of what would work, but limiting commercial operation is very difficult to achieve in the current environment in Australia. In this context, Alcohol Management Plans, which might encompass a liquor accord as just one of many concurrent strategies, may offer a greater scope to achieve harm reduction.

## Appendix: liquor accord documents

New South Wales:

- Liquor Accords Strategic Plan
- Great Lakes Liquor Accord
- Bankstown Liquor Accord
- Coffs Harbour Liquor Accord
- City Central Liquor Accord

Northern Territory:

- Department of Business—Liquor Accords
- Alice Springs Liquor Accord
- Katherine Liquor Accord

Queensland:

- Liquor Accords Strategy

South Australia:

- Consumer and Business Services Precinct Management Group (which includes a section on liquor accords)
- Adelaide Liquor Accord
- Ceduna Liquor Accord
- Holdfast Bay Liquor Accord
- Clare Liquor Accord
- Riverland Liquor Accord

Victoria:

- Victorian Commission for Gambling and Liquor Regulation Forums and Accords
- Geelong Regional Liquor Licensing Accord
- Stonnington Liquor Accord

Western Australia:

- Liquor Accords
- Fremantle Liquor Accord

## References

1. Chikritzhs T, Gray D, Lyons Z, Siggers S. *Restrictions on the sale and supply of alcohol: evidence and outcomes*. Perth: National Drug Research Institute, Curtin University of Technology, 2007.
2. Lang E, Rumbold G. The effectiveness of community-based interventions to reduce violence in and around licensed premises: a comparison of three Australian models. *Contemporary Drug Problems* 1997;24(4):805–26.
3. NSW Government Office of Liquor, Gaming and Racing. About local liquor accords. 2013. Accessed 12 August 2013 <[www.olgr.nsw.gov.au/accords\\_about.asp](http://www.olgr.nsw.gov.au/accords_about.asp)>.
4. Room R. Individualized control of drinkers: back to the future? *Contemporary Drug Problems* 2012;39(2):311–43.
5. NSW Government Office of Liquor, Gaming and Racing. Current local liquor accords. 2013. Accessed 7 August 2013 <[www.olgr.nsw.gov.au/accords\\_currntaccrds.asp](http://www.olgr.nsw.gov.au/accords_currntaccrds.asp)>.
6. Queensland Government Office of Liquor and Gaming Regulation. *Queensland liquor accords newsletter: July 2013*. 2013. Accessed 9 August 2013 <[www.olgr.qld.gov.au/publications/newsletters/accords/qla-july-2013.shtml#2](http://www.olgr.qld.gov.au/publications/newsletters/accords/qla-july-2013.shtml#2)>.
7. Victorian Commission for Gambling and Liquor Regulation. Forum and accord list. 2013. Accessed 7 August 2013 <[https://assets.justice.vic.gov.au/vcglr/resources/eeec2300-0bbf-4a99-8a01-1dd4deccc0f7/accordforumcontactlist\\_may2013.pdf](https://assets.justice.vic.gov.au/vcglr/resources/eeec2300-0bbf-4a99-8a01-1dd4deccc0f7/accordforumcontactlist_may2013.pdf)>.
8. Government of South Australia Consumer and Business Services. Precinct management groups. 2013. Accessed 7 August 2013 <[www.cbs.sa.gov.au/wcm/licensing-and-registration/liquor-and-gambling/liquor-section/precinct-management-groups/](http://www.cbs.sa.gov.au/wcm/licensing-and-registration/liquor-and-gambling/liquor-section/precinct-management-groups/)>.
9. Alice Springs Licensees' Alcohol Accord. Alcohol accords Northern Territory. 2013. Accessed 7 August 2013 <[www.alcoholaccordsnt.com.au/licensee-members.html](http://www.alcoholaccordsnt.com.au/licensee-members.html)>.
10. Liquor Accord Delivery Unit. Liquor accord NSW. 2013. Accessed 7 August 2013 <[www.liquoraccord.org/liquor-accords/nsw](http://www.liquoraccord.org/liquor-accords/nsw)>.
11. NSW Government Office of Liquor, Gaming and Racing. Liquor accords. 2013. Accessed 20 September 2013 <[www.olgr.nsw.gov.au/accords\\_home.asp](http://www.olgr.nsw.gov.au/accords_home.asp)>.
12. Queensland Government Office of Liquor and Gaming Regulation. Liquor accords. 2013. Accessed 12 August 2013 <[www.olgr.qld.gov.au/liquor/accords/index.shtml](http://www.olgr.qld.gov.au/liquor/accords/index.shtml)>.
13. Chikritzhs T. Australia. In: Hadfield P, ed. *Nightlife and crime: social order and governance in international perspective*. Oxford: Oxford University Press, 2009, pp. 305–26.
14. Miller P, Tindall J, Sonderlund A, Groombridge D, Lecathelinais C, Gillham K et al. *Dealing with Alcohol and the Night-Time Economy (DANTE): final report*. Geelong, Vic.: Deakin University and Hunter New England Population Health for the National Drug Law Enforcement Research Fund, 2012. Accessed 19 March 2014 <[www.ndlerf.gov.au/pub/Monograph\\_43.pdf](http://www.ndlerf.gov.au/pub/Monograph_43.pdf)>.
15. Hauritz M, Homel R, McIlwain G, Burrows T, Townsley M. Reducing violence in licensed venues through community safety action projects: the Queensland experience. *Contemporary Drug Problems* 1998;25(3):511–52.
16. Hawks DV, Rydon P, Stockwell TR, White M, Chikritzhs TN, Heale P. *The evaluation of the Fremantle police–licensee accord: impact on serving practices, harm and the wider community*. Perth: Curtin University, National Drug Research Institute, 1999.
17. CALM Sunshine Coast. Award for excellence 2012: Local Government Managers Association Qld. 2011. Accessed 12 August 2013 <[www.calmssc.com.au/awards](http://www.calmssc.com.au/awards)>.

18. Suitor M. Catch Ya Later Condo—an alternative transport option for rural communities. Paper presented at Joint Australasian College of Road Safety–Travelsafe National Conference, Brisbane, 18–19 September 2008.
19. Eurobodalla Liquor Accord. *Think the drink 2010: Responsible Service of Alcohol in Schools Program evaluation report*. 2010. Accessed 12 August 2013 <[www.olgr.nsw.gov.au/pdfs/Think-the-drink-Eurobodalla-accord.pdf](http://www.olgr.nsw.gov.au/pdfs/Think-the-drink-Eurobodalla-accord.pdf)>.
20. Gippsland Lakes Community Health. *East Gippsland Alcohol and Other Drugs Action Plan 2008–2011*. GLCH, 2008.
21. Port Augusta Alcohol Management Group. *Port Augusta Community Alcohol Management Plan 2010–2015: an integrated approach to alcohol use and misuse in our community*. Report no. 85/12ccs. Port Augusta, SA: Corporate and Community Services, 2010.
22. Hickey D. Start your own liquor accord: part 4. Indooroopilly, Qld: Club Training Australia, 2013. Accessed 12 August 2013 <[www.clubtraining.com.au/2013/06/start-your-own-liquor-accord-part-4/](http://www.clubtraining.com.au/2013/06/start-your-own-liquor-accord-part-4/)>.
23. Alcohol and other Drugs Council of Australia. Ref C2009/1954 Application for authorisation A91201 & A91202 lodged by the Casuarina Precinct Stakeholders Committee—interested party consultation. Canberra: ADCA, 2010.
24. Government of South Australia Office of the Liquor and Gambling Commissioner. *Riverland Liquor Licensing Accord*. Adelaide: OLG, 2013. Accessed 12 August 2013 <[www.olgc.sa.gov.au/liquor/accords/RIVERLAND.pdf](http://www.olgc.sa.gov.au/liquor/accords/RIVERLAND.pdf)>.
25. Government of South Australia Office of the Liquor and Gambling Commissioner. *Adelaide Liquor Licensing Accord*. Adelaide: OLG, 2013. Accessed 12 August 2013 <[www.olgc.sa.gov.au/general/latest\\_news/ALA.pdf](http://www.olgc.sa.gov.au/general/latest_news/ALA.pdf)>.
26. Public Health Division. *Fremantle Accord: 2000 and beyond*. Perth: Health Department of Western Australia, 2000.
27. Geelong Regional Liquor Licensing Accord. 'Stay Cool', enjoy the nightlife, and help keep Geelong a Safe City. 2007. Accessed 12 August 2013 <[www.geelongaustralia.com.au/common/Public/Documents/8cc7dd1b0365813-Geelong%20Liquor%20Licensing%20Accord.pdf](http://www.geelongaustralia.com.au/common/Public/Documents/8cc7dd1b0365813-Geelong%20Liquor%20Licensing%20Accord.pdf)>.
28. Public Bodies Review Committee. *Report of the Public Bodies Review Committee into the Liquor Licensing Commission Victoria*. Contract no. 53. Victoria: Parliament of Victoria, 1995.
29. Wiggers JH, Jauncey M, Considine RJ, Daly JB, Kingsland M, Purss K et al. Strategies and outcomes in translating alcohol harm reduction research into practice: the Alcohol Linking Program. *Drug and Alcohol Review* 2004;23(3):355–64.
30. Goldflam R. Damming the rivers of grog: taking the hard decisions to stop the violence. Alice Springs: Northern Territory Legal Aid Commission, 2010. Accessed 14 August 2013 <<http://members.ozemail.com.au/~pipmcmanus/Damming%20the%20Rivers%20of%20Grog.pdf>>.



# Chapter 18

## Alcohol Management Plans

Kristen Smith, Marcia Langton, Peter d'Abbs, Robin Room, Richard Chenhall and Alyson Brown<sup>1</sup>

Alcohol Management Plans (AMPs) are a relatively new instrument in the extensive range of regulations relating to alcohol supply and consumption. AMPs vary in design and implementation across Australia, and include strategies designed to reduce harms resulting from alcohol misuse. The majority of AMPs are based on the principle of harm minimisation and include supply, demand and harm reduction measures. Many include provisions that ban or restrict the supply, possession and/or consumption of alcohol in relevant areas and some have been used to place restrictions on local liquor outlets. In addition, AMPs can include other measures, such as women's shelters, support groups, sobering-up shelters, community patrols, education and awareness campaigns, and sport and other youth diversion activities.

AMPs have primarily been adopted as a strategy or tool where Indigenous drinking is defined as a major issue in the range of drinking problems in the community. In Western Australia, the term 'alcohol management plan' is used in a more general sense to refer to community planning and periodic revision of plans concerning alcohol issues in the community (1, 2). This chapter does not use this more general sense of 'alcohol management plan' but refers to the more specific meaning used elsewhere in Australia. Liquor accords are a related strategy employed to manage alcohol-related problems at a local level. However, liquor accords generally centre on relationships between alcohol sellers and the police, with varying degrees of input from other local stakeholders, and focus on controlling individual problematic drinkers and situations rather than on any general controls on alcohol sales.

The first AMP was designed and implemented in late 2002 by the Aurukun community in Queensland and was subsequently adopted by governments and communities across Australia. AMPs have been adopted in regional towns, such as Alice Springs and Port Augusta, as well as remote Indigenous communities in the Northern Territory, Western Australia and northern Queensland. Although limited, the literature available shows that the most effective AMPs are those negotiated at a local community level. This includes involving community members and other stakeholders to identify the measures best suited to reducing alcohol-related harms to individuals, families and the community. In these cases, AMPs are designed to facilitate the empowerment of local communities to develop solutions appropriate to local conditions. They can also act as a device to mobilise support and negotiations with external agencies, such as police and health (3).

AMPs have become contentious political policy instruments, initiating debates involving, among others, the Northern Territory and Queensland governments and the Australian Government. Debates have mainly focused on the effectiveness of broad-based supply restrictions compared to more individualised approaches that target problem drinkers, and issues relating to Indigenous civil rights (4–7).

<sup>1</sup> This chapter is adapted, with permission, from an Indigenous Justice Clearinghouse research brief: Smith K, Langton M, d'Abbs P, Room R, Chenhall R, Brown A. *Alcohol Management Plans and related alcohol reforms*. Sydney: Indigenous Justice Clearinghouse, 2013.

This paper addresses and reviews the evidence on:

- the background to the emergence of AMPs
- the development of AMPs
- different components and approaches of AMPs
- evidence of the effectiveness of AMPs
- community support and the process of design and implementation of AMPs
- current issues and challenges for AMPs.

Measures such as taxation, minimum pricing, residential treatment and clinical interventions involving pharmacotherapies are not discussed in this chapter. In addition, the chapter does not address local alcohol management solutions, or liquor accords, which are used more widely in Australia, as discussed in the previous chapter.

## Background to the emergence of AMPs

Various initiatives preceded the introduction of AMPs, including the 'restricted' or 'dry' areas established by the Liquor Act 1979 in the Northern Territory (8). Under the Act, a community could make an application to the Chairman of the Liquor Committee to become a restricted or dry area. The Chairman made decisions based on the application and the perceived level of community support. This included consultation with police and other government agencies (8). Restrictions included the introduction of permit systems that only allowed individual permit holders to consume alcohol in dry areas and penalties that applied to licensed 'wet canteens' or social clubs (8).

In 1995, a different area-based approach was introduced in the Cape York community of Aurukun, enabling individuals to apply for bans or restrictions of alcohol in their homes or public areas. This was enacted through the *Local Government (Aboriginal Lands) Amendment Act 1995*, which replaced earlier legislation. Decisions on the restrictions were made by the Aurukun Alcohol Law Council, which was made up of elders and other community members of Aurukun (9).

Another program that acted as an antecedent to AMPs was the banning of takeaway alcohol sales in major liquor outlets in Tennant Creek on Thursdays between 1995 and 2006, which became known as 'Thirsty Thursday'. These restrictions were put in place by the Northern Territory Liquor Commission in response to leadership from local Aboriginal organisations and Aboriginal elders requesting one day free from alcohol per week (10). The restrictions included banning takeaway sales in a number of regional towns in northern Australia, and banning the sale of glass bottles in Alice Springs (11–16). Restrictions on the sale and supply of alcohol have been a major focus in the Australian literature concerning efforts to reduce the harms associated with alcohol misuse in Aboriginal communities (17).

The National Drug Research Institute (17) conducted a comprehensive, critical review of all restrictions in Aboriginal communities in Australia and found that there is no single mix of restrictions that would work for all communities. This review concluded that the effectiveness of restrictions was dependent on a number of factors in specific situations or circumstances (17). In some cases, a single targeted intervention, such as an alcohol-free day, can be more effective than a suite of restrictions that are poorly implemented. Interventions with the highest levels of efficacy were reported and included changes in price/taxation, trading hours and minimum drinking/purchase age. Reducing access to high-risk beverages, reducing outlet density and dry community declarations all demonstrated effective outcomes for reducing consumption and alcohol-related problems. There are also distinct challenges in remote Aboriginal communities where specific restrictions require a certain level of enforcement that might be difficult for areas lacking in resources, such as numbers of police officers (17:220).

## Initial AMPs

The first AMPs to be introduced in Australia were adopted under a new Queensland Government policy formulated in response to the Cape York Justice Study, which found that alcohol abuse and violence had become normalised in Cape York communities (18, 19). The policy, entitled *Meeting challenges, making choices*, provided a set of measures for reducing alcohol-related violence and other harms in Indigenous communities in Cape York and elsewhere in Queensland (18).

This policy included a provision for individual communities to develop their own AMPs through Community Justice Groups that were granted statutory powers through the *Community Services Legislation Amendment Act 2002* (Qld). Although Community Justice Groups have been established in several Australian jurisdictions, only in Queensland do they have a statutory role with respect to developing and overseeing AMPs. As noted above, in late 2002, Australia's first AMP was established in Aurukun, Cape York. This was followed by the implementation of AMPs in 18 remote communities in Cape York (20).

In July 2005, an AMP that was heavily based on a permit system for takeaway alcohol was launched on Groote Eylandt and Bickerton Island. Early anecdotal successes of the Groote Eylandt AMP endorsed it as a popular 'policy instrument' and subsequently AMPs were introduced in Alice Springs (2006), Katherine (2008), Tennant Creek (2008) and other communities (21–24). As at May 2013 there were 24 AMPs being developed in regional and remote locations across the Northern Territory (J Alley, pers. comm., 3 June 2013).

The Australian Government's *Stronger Futures in the Northern Territory Act 2012* (Cth) established for the first time a role for the Australian Minister of Indigenous Affairs in approving or rejecting AMPs in the Northern Territory. The Act ascribed a central place to AMPs in reducing alcohol-related harms in Indigenous communities in the Northern Territory. This development followed the *Northern Territory National Emergency Response Act 2007* (Cth), which imposed a ban on possession or consumption of alcohol on all Aboriginal land in the Northern Territory, including remote communities (with some exemptions, such as licensed clubs). Within this context, the AMP framework was designed as a means for government to work with communities and address community safety with a particular focus on providing more support for women and children and people with alcohol problems.

For the Minister to approve an AMP, it has to meet five minimum standards established by the *Stronger Futures in the Northern Territory (Alcohol Management Plans) Rule 2013* (25). The minimum standards are a legislative mechanism, providing guidelines for the key processes and content of AMPs (25). For example, Standard 3 suggests strategies for supply, demand and harm reduction, while the other standards focus on consultation and engagement, management/governance structures, monitoring, reporting and evaluation, and geographical boundaries (26).

## Different components and approaches

AMPs significantly differ from earlier interventions in the processes used in their design and implementation, particularly in some jurisdictions with regard to the level of community engagement. They also vary in scope, statutory (or non-statutory) elements, and relationship to supply, harm or demand reduction. The *Northern Territory Alcohol Framework* report discussed the optional strategies that AMPs might include, such as (27):

- consultation processes
- identification of required services and priorities, including priorities for funding
- local social control strategies and local community education strategies
- commitment by agencies and organisations to undertake specific tasks
- ways in which policing will be carried out
- plans of how information will be circulated
- interaction between police and local community leaders and organisations
- undertakings by licensees about responsible service or other supply issues.

Although AMPs are based on the principle of harm minimisation, in most communities several alcohol control measures, such as restrictions and permit systems, had been adopted prior to the introduction of AMPs. This may indicate that in these communities, by adding AMPs to their existing approaches, the residents are developing and adopting a suite of strategies to suit their circumstances. If so, such a diversity of instruments to reduce alcohol-related harm brings these communities more into line with the legal and policy complexity of large urban settings, where a combination of regulation, licensing conditions, inspections, penalties, controlled areas and police enforcement is the norm.

In the Aboriginal communities that adopted AMPs, work was undertaken by governments to re-engage with communities and develop local demand and harm reduction measures. Queensland, Northern Territory and the Australian governments emphasise that alcohol restrictions are only one aspect of a complete AMP, which should include other elements such as harm and demand reduction strategies (26, 28, 29). However, current evaluations of AMPs have demonstrated that although supply measures have been implemented or associated with specific AMPs, little progress has been made in the areas of harm and demand reduction. d'Abbs (30:507) contends that although governments are prepared to support changes associated with regulating the sale of alcohol, demand reduction strategies such as treatment and rehabilitation garner less support. He argues this is due to the comparatively low costs associated with amending regulations compared to the higher cost of many demand reduction options. In the following sections, key examples of supply, demand and harm reduction initiatives associated with AMPs are briefly described.

## Supply

Supply reduction measures have often been the central part of AMPs in Australia. Supply reduction measures control the availability of alcohol through:

- banning or restricting the supply, possession and consumption of alcohol in certain places or
- placing local restrictions on liquor outlets as part of a broader strategy for reducing local alcohol-related harm.

In all communities, supply measures that existed before the formal introduction of an AMP have been maintained. Any additional supply measures considered for the AMP often focus on tailoring aspects of existing supply restrictions. Some examples include developing liquor accords, improving night patrols, flexible supply strategies around key community events and streamlining the process of complaints against licensed premises (3, 31). This occurred in Tennant Creek, where the AMP brought in a range of measures to implement and monitor more stringent supply plan provisions. This included a focus on low-priced, high-level alcohol products, the support of increased enforcement to detect and prosecute illegal sales, compliance with licensing conditions, the establishment of alcohol-free areas at community and sporting events, and developing liquor accords with businesses (22).

In some regions the supply of alcohol is controlled through permit systems. On Groote Eylandt individuals are unable to purchase takeaway alcohol unless they are permit holders. Requirements for permit holders are clearly specified, along with consequences for failure to comply. There is a provision in the Northern Territory Liquor Act that allows for the Licensing Commission to suspend takeaway liquor sales during times of community tension. This can also be applied in areas that do not have a permit system (23).

## Demand

Demand reduction strategies have varied in communities across different AMPs. However, improved service delivery, in addition to education and health promotion programs in schools and communities, is a common approach. For example, the AMP in Katherine proposed demand reduction measures that included the development of better pathways between early intervention and withdrawal, and rehabilitation and post-discharge programs, in addition to responsible drinking education campaigns (3). In Tennant Creek demand reduction measures included health promotion and education campaigns in schools and communities, development of community standard protocols on responsible drinking practices and implementation of

best practice rehabilitation services, among others (10). In Alice Springs the AMP set out demand reduction measures, such as providing training for health professionals to better target and intervene with risky drinkers, local grants for community groups to address demand reduction strategies, school-based education programs, and development of responsible drinking practices with licensed clubs and sporting venues (24). In Port Augusta the AMP demand reduction strategies included appropriate integrated and enhanced service delivery, early intervention programs and community prevention programs (32).

Although a range of demand reduction measures have been proposed under the majority of AMPs, a number of evaluations have highlighted that many of these measures have not been implemented (3, 10, 24). In the Katherine AMP evaluation, d'Abbs et al. (3) contend that the difficulties experienced in implementing harm reduction strategies are likely due to the higher levels of financial, capital and personnel resources required for their implementation.

## Harm reduction

When applying harm reduction strategies to alcohol misuse, the focus is on reducing those harms that directly impact upon the individual drinker in a way that is detrimental to his or her health or wellbeing, as well as those that impact upon people around the drinker, whether members of the drinker's family or of the wider community. Although implemented in different ways, the most predominant harm reduction measures implemented in communities with AMPs have been night patrols and sobering-up shelters.

Harm reduction measures in Tennant Creek included increased access to services, such as rehabilitation and withdrawal, and identification of service gaps and better collaboration between services, such as police and night patrols. In the Alice Springs AMP, harm reduction measures focused on increasing the effectiveness of current services, such as the community night patrol, expanding sobering-up services and strengthening options available to support families (24). In Katherine the emphasis was also on improving current services, including the provision of increased accommodation facilities for short-term visitors, targeted case management for at-risk drinkers and increased use of court-mandated treatment for alcohol-related offenders (3).

## Evidence of the effectiveness of AMPs

A number of AMPs across Australia have been evaluated (10, 24, 30, 31). These evaluations include qualitative accounts of the implementation process and the extent of community support for AMPs, as well as quantitative analyses of outcomes. Quantitative outcomes include key measures, such as:

- trends in alcohol sales
- hospital emergency department presentations for alcohol-related disorders
- hospital separations for injuries and alcohol-related mental and behavioural disorders
- trends in incidents of alcohol-related assaults
- trends in incidents of disturbances and anti-social behaviour
- public drunkenness apprehensions.

Additional quantitative measures have been used to evaluate AMPs, depending upon the restrictions, or in contexts where AMPs incorporate the requirement for permits to purchase takeaway alcohol.

## Evaluations of AMPs

Evaluations of the impact of specific AMPs on a range of key indicators associated with alcohol-related harm have found variable results. General conclusions about the effectiveness of AMPs must be made with caution due to the limited number of evaluation reports and studies available to the public. An important further consideration is that, in many cases, evaluations of AMPs have found that the full complement of demand, harm and supply reduction measures are rarely implemented.

Although the Queensland Government commissioned a number of evaluative studies of AMPs in Queensland, some of which were made available to the public at the time, these studies are no longer in the public domain. However, two studies have been conducted to examine data from the Royal Flying Doctor Service (RFDS) (33, 34). Margolis et al. (33) analysed the trauma retrieval rates from the RFDS from 1995 to 2005 in four Cape York communities where AMPs were in place. The authors found a statistically significant decline in injury retrieval rates following commencement of AMPs. When compared with rates for the two years immediately preceding AMPs, rates for the two years post-AMPs fell by 52 per cent. Margolis et al. (33) concluded that the AMPs had been effective in reducing serious injury in these communities. The subsequent study (34:503) continued this analysis, finding that serious injury rates fell from 30 per 1000 people in 2008 to 14 per 1000 people in 2010.

However, Gray and Wilkes (35) questioned the use of RFDS retrieval rates for all serious injuries as a reliable indicator for alcohol-related harm. They suggested that aetiological fractions for emergency department presentations would have allowed for the presentation of more accurate data of the impact of AMPs.

Another location where positive outcomes have been recorded following the introduction of an AMP was for Groote Eylandt and Bickerton Island in the Northern Territory (31). Evidence from qualitative interviews conducted with residents and key stakeholders in the region found that as a result of the AMP, community functioning had markedly improved, violence had decreased and engagement in the workforce had improved. As one informant put it, 'Before there was violence. Women scared, children scared. Children growing up seeing violence. Since the alcohol has stopped, the men who used to be drinkers and used to be violent are going hunting. Taking their children hunting. Getting good food' (31:4).

The researchers also analysed police law enforcement data in the region, and found there had been a reduction in incidence of aggravated assaults (-67 per cent), house break-ins (-86 per cent) and admissions to correctional centres (-23 per cent) in the years following the introduction of the AMP (31:5). A key finding of the study was that the success of the AMP could be attributed to ownership and support of the system by the Aboriginal communities and by key local service providers, employers and the licensed premises (31). Others, such as Gray and Wilkes (35), have supported this idea and argued that in towns such as Halls Creek and Fitzroy Crossing, where Aboriginal and non-Aboriginal people worked together, alcohol restriction measures were more effective.

Evaluations of individual AMPs in other Northern Territory towns have shown variable outcomes, such as those conducted in Katherine, Alice Springs and Tennant Creek (3, 10, 24). The Katherine AMP commenced in January 2008, and in the six-month period following its introduction there was a significant decrease in the number of people presenting in the emergency department for 'mental and behavioural disorders due to the use of alcohol' (3:4). However, the initial decline soon reversed. By the end of 2008, the total number of presentations was 7.8 per cent higher than the 12-month period prior to the introduction of the AMP (3:4). A similar trend occurred with alcohol-related assaults, where the recorded level of assaults in the first six months of 2009 was 32 per cent higher than the equivalent period prior to the commencement of the AMP (3:4).

Tennant Creek has an extensive history of measures to address alcohol-related harms and other social problems. An AMP took effect in the town in August 2008 and was preceded by the takeaway alcohol restriction, mentioned above, known as Thirsty Thursday. An evaluation of these measures found that the only indicator that showed a substantial positive change as a result of the AMP compared to the rates achieved during the Thirsty Thursday restrictions was in the reduction of public order incidents (10). In the year following the revocation of Thirsty Thursday (2006-07), these incidents increased by 6.5 per cent. However, after the introduction of the AMP (2008-09) they dropped to 27.1 per cent lower than that of the preceding year (2007-08). Significantly, the post-AMP rates were also 25 per cent lower than the year prior to the revocation of Thirsty Thursday (10:56-7). Although the number of assaults and apprehensions declined following the introduction of the AMP, they still remained higher than they had been prior to the 2005-06 period. The number of Indigenous people presenting at the Tennant Creek emergency department for alcohol-related disorders rose by 56 per cent in 2005-06 and by a further 61

per cent in 2007–08. This upward trend was reversed following the introduction of the AMP, but was still 61 per cent higher than in 2005–06, prior to the Thirsty Thursday restrictions being lifted (10:8).

The Alice Springs AMP was implemented in 2006 and an evaluation found that for the period from 2006–08 there was an 18 per cent decrease in total alcohol consumption (24:161). During the same period the absolute number of assaults rose marginally; however, the number of serious assaults recorded declined (24:97–8). This finding was consistent with the qualitative data collected from interviews with police and staff from the Alice Springs Hospital. Admissions to the sobering-up shelter also increased from 2006–08, although the evaluators attributed this to more proactive policing during this time (24:100). Lastly, there was an increase in the number of break-ins to commercial properties in 2007–08, particularly licensed premises (24:100).

It is important to note that the Katherine, Tennant Creek and Alice Springs AMP evaluations cite the difficulties in attributing the increases or decreases of indicators solely to the introduction of AMPs. This could be due to the introduction of many other government policies during the 2006–12 period, such as the quarantining of income by the Australian Government as part of the Northern Territory Emergency Response Act. Other factors that may impact on a range of indicators include changes to government operations, such as police reporting procedures and community events that occur during the development and ongoing management of AMPs.

## Community support and the process of design and implementation

The processes of the design and implementation of an AMP vary depending on the way it is introduced to a community, town or region. In Australia, there have been three distinct pathways (3, 10, 31, 36):

- strong community involvement in defining the AMP agenda (for example, Groote Eylandt)
- government-managed community participation (for example, Tennant Creek, Katherine) or
- initiation of the process by government-appointed consultants (for example, Yarrabah).

The limited evidence available on their design and implementation indicates that AMPs that are created through a relatively high level of community involvement, such as on Groote Eylandt, demonstrate stronger and more sustainable outcomes than those developed and managed through a more 'top down' approach. An AMP, regardless of its formulation, is an attempt to bring about individual and community change. At the level of the community, they are designed to enhance local capacity to prevent, manage and treat alcohol misuse. It is expected that changes made at the community level will instigate behavioural changes at the individual level (37). Successful community-level interventions to combat alcohol misuse, such as the AMP on Groote Eylandt, have been preceded by a considerable amount of community activity and achievement (31).

At Groote Eylandt, the permit-based takeaway alcohol system introduced in July 2005 was preceded by sustained community engagement from local police. Meetings were held with the Anindilyakwa Land Council and other community members to ensure that issues were heard and reflected in the final plan submitted to the Northern Territory Licensing Commission. Other service providers, such as the health clinic and the mining company GEMCO, also played a key role in engaging with community members (31).

Although both AMPs were initially community driven in Katherine and Tennant Creek, evaluations found that both AMPs were transformed into a government-driven process (3, 10). This was in regards to both the development and design of the AMP, as well as the ongoing management. In the Katherine evaluation, a number of Indigenous organisations extensively involved in preventing, managing and treating alcohol-related problems reported that they were excluded from any meaningful discussions regarding alcohol issues and possible solutions (3). There was a similar finding in the Tennant Creek AMP evaluation, with some groups arguing that the agenda was controlled by the Northern Territory Government (10). Also, more than half the people surveyed in the Tennant Creek evaluation had no awareness of the existence of an AMP.

The Alice Springs AMP evaluation also reported that many community members believed the Northern Territory Government had introduced restrictions without adequate consultation. Many of those surveyed were not aware of the broader elements of the AMP, such as the demand and harm demand reduction strategies, and viewed the AMP as only containing alcohol restrictions (24).

## Current issues and challenges for AMPs

Although AMPs can be viewed as a viable way for all levels of government and local communities to work together in addressing alcohol issues, there are many challenges facing AMPs in Australia. At a policy level, a key challenge remains in balancing the interests and principles of different actors and sectors within society. Policies and programs designed to reduce alcohol-related harms challenge the vested interest of those who gain from selling alcohol and also members of the community who strongly believe it is their right to purchase and drink alcohol when and where they choose (10).

The evaluations carried out on AMPs currently in place have highlighted a number of weaknesses. For example, some of the AMPs were initially designed to incorporate measures addressing supply, harm and demand reduction but, when implemented, the agenda has often narrowed to primarily cover supply issues (10, 24). Other criticisms challenge the lack of clarity in the roles and responsibilities of communities and governments and lack of support in nurturing local community leadership committed to dealing effectively with alcohol-related problems. It has been suggested that it is necessary for coalitions to be developed between those directly involved in the AMP and other invested individuals, institutions and organisations to support the goals of AMPs (3:6–7, 24, 30).

## Conclusions

A number of AMPs operate in Aboriginal communities in Australia with the aim of addressing local alcohol-related harms. AMPs are regarded as a vehicle for governments and communities to work together to combat a range of alcohol problems through the use of local community control over alcohol availability and the management of alcohol-related problems. Although evidence is limited, it has been found that where AMPs are locally driven and owned, there are stronger and more sustainable outcomes. Drawing on both international and Australian literature, there is a good evidence base for the individual components that make up an AMP (38). Success has been achieved through alcohol restrictions and both harm and demand reduction strategies have an evidence base as targeted interventions. As more AMPs are implemented across Australia, particularly in the northern jurisdictions, it is clear there is a greater need for further research to better understand the process of implementation of how communities can work together with governments to design, implement and evaluate AMPs.

## References

1. Government of Western Australia Drug and Alcohol Office. *Local government alcohol management package*. Perth: Drug and Alcohol Office, 2007. Accessed 25 October 2013 <[www.dao.health.wa.gov.au/Informationandresources/Publicationsandresources/Resourcesforlocalgovernment.aspx](http://www.dao.health.wa.gov.au/Informationandresources/Publicationsandresources/Resourcesforlocalgovernment.aspx)>.
2. City of Joondalup. *Alcohol Management Plan 2011–2014*. Joondalup, WA: City of Joondalup, 2011. Accessed 25 October 2013 <[www.joondalup.wa.gov.au/Files/Alcohol%20Management%20Plan%202011-2014.pdf](http://www.joondalup.wa.gov.au/Files/Alcohol%20Management%20Plan%202011-2014.pdf)>.
3. d'Abbs P, McMahon R, Cunningham T, Fitz J. *An evaluation of the Katherine Alcohol Management Plan and Liquor Supply Plan*. Casuarina, NT: Menzies School of Health Research for NT Department of Justice, 2010.
4. Aikman A. NT minister slams federal 'prohibition' on grog. *Australian*. 9 November 2012.



5. Northern Territory Country Liberal Party. *Safe families, safe future*. Jingili, NT: Country Liberal Party, 2012.
6. Queensland Government Department of the Premier and Cabinet. Macklin hypocritical on alcohol reform. Press release. Brisbane: Queensland Government, 2012. Accessed 25 October 2013 <<http://statements.qld.gov.au/Statement/2012/10/18/macklin-hypocritical-on-alcohol-reform>>.
7. Walker J, Karvelas P. Relaxed grog bans 'to revive violence', Aboriginal leaders warn. *Australian*. 4 October 2012.
8. d'Abbs P. Restricted areas and Aboriginal drinking. In: *Proceedings of the Alcohol and Crime Conference*. Canberra: Australian Institute of Criminology, 1990, pp. 121–34.
9. Martin D. *The supply of alcohol in remote Aboriginal communities: potential policy directions from Cape York*. Canberra: Centre for Aboriginal Economic Policy Research, Australian National University, 1998.
10. d'Abbs P, Ivory B, Senior K, Cunningham T, Fitz J. *Managing alcohol in Tennant Creek, Northern Territory: an evaluation of the Tennant Creek Alcohol Management Plan and related measures to reduce alcohol related problems*. Darwin: Menzies School of Health Research for NT Department of Justice, 2010.
11. d'Abbs P, Togni S. *The Derby liquor licensing trial: a report on the impact of restrictions on licensing conditions between 12 January 1997 and 12 July 1997*. Occasional paper no. 3/98. Darwin: Menzies School of Health Research, 1998.
12. d'Abbs P, Togni S, Crundall I. *The Tennant Creek Liquor Licensing Trial, August 1995 – February 1996: an evaluation*. Menzies occasional papers no. 2/96. Darwin: Menzies School of Health Research and NT Living With Alcohol Program, 1996.
13. d'Abbs P, Togni S, Stacey N, Fitz J. *Alcohol restrictions in Tennant Creek: a review prepared for the Beat the Grog Committee, Tennant Creek, Northern Territory*. Darwin: Menzies School of Health Research, 2000.
14. Douglas M. Halls Creek turns around. *Aboriginal and Islander Health Worker Journal* 1995;19(2):6–7.
15. Gray D, Saggars S, Atkinson, Sputore B, Bourbon D. *Evaluation of the Tennant Creek liquor licensing restrictions: a report prepared for the Tennant Creek Beat the Grog Sub-Committee*. Perth: Curtin University, National Centre for Research into the Prevention of Drug Abuse, 1998.
16. Gray D, Saggars S, Sputore B, Bourbon D. What works? A review of evaluated alcohol misuse interventions among Aboriginal Australians. *Addiction* 2000;95(1):11–22.
17. National Drug Research Institute. *Restrictions on the sale and supply of alcohol: evidence and outcomes*. Perth: Curtin University, National Drug Research Institute, 2007.
18. Queensland Government Department of the Premier and Cabinet. *Meeting challenges, making choices: the Queensland Government's response to the Cape York Justice Study*. Brisbane: Queensland Government, 2002.
19. Fitzgerald T, Queensland Department of the Premier and Cabinet. *Cape York Justice Study report*. Brisbane: Department of Premier and Cabinet, Queensland Government, 2001.
20. Hudson S. *Alcohol restrictions in Indigenous communities and frontier towns*. St Leonards, NSW: Centre for Independent Studies, 2011. Accessed 18 October 2013 <[www.cis.org.au/images/stories/policy-monographs/pm-116.pdf](http://www.cis.org.au/images/stories/policy-monographs/pm-116.pdf)>.
21. Katherine Region Harmony Group. *Katherine Alcohol Management Plan 2012–2015: a plan for everyone*. Katherine, NT: Katherine Region Harmony Group, 2012. Accessed 18 October 2013 <[www.katherine.np.com/images/documents/Draft%20Katherine%20Alcohol%20Management%20Plan%20Final%20May%202012.pdf](http://www.katherine.np.com/images/documents/Draft%20Katherine%20Alcohol%20Management%20Plan%20Final%20May%202012.pdf)>.

22. Northern Territory Government Department of Justice. *Tennant Creek Alcohol Management Plan*. Darwin: NT Department of Justice, 2008.
23. Northern Territory Government Department of Justice. *Groote Eylandt and Milyakburra Alcohol Management Plan*. Darwin: NT Department of Justice, 2006.
24. Senior K, Chenhall R, Ivory B, Stevenson C. *Moving beyond the restrictions: the evaluation of the Alice Springs Alcohol Management Plan*. Darwin: Menzies School of Health Research & Monash University, School of Public Health and Preventive Medicine, 2009.
25. Australian Government Department of Families, Housing, Community Services and Indigenous Affairs. *Minimum standards for Alcohol Management Plans in the Northern Territory*. Canberra: Australian Government, 2013.
26. Australian Government Department of Families, Housing, Community Services and Indigenous Affairs. Alcohol Management Plan minimum standards—frequently asked questions. 2013. Accessed 22 March 2013 <[www.fahcsia.gov.au/our-responsibilities/indigenous-australians/programs-services/alcohol-management-plan-minimum-standards-frequently-asked-questions](http://www.fahcsia.gov.au/our-responsibilities/indigenous-australians/programs-services/alcohol-management-plan-minimum-standards-frequently-asked-questions)>.
27. Renouf G, Townsend J. *Northern Territory Alcohol Framework: final report*. Townsend J, Manzie D, Ah Chee D, eds. Darwin: NT Government, 2004.
28. Northern Territory Government Department of Business. *Liquor*. Darwin: NT Government, 2012. Accessed 22 March 2013 <[www.nt.gov.au/justice/licenreg/liquor/index.shtml](http://www.nt.gov.au/justice/licenreg/liquor/index.shtml)>.
29. Queensland Government Department of Justice and Attorney-General. Indigenous services: alcohol restrictions. 2012. Accessed 23 January 2013 <[www.olgr.qld.gov.au/indigenous/alcoholManagementPlans/index.shtml](http://www.olgr.qld.gov.au/indigenous/alcoholManagementPlans/index.shtml)>.
30. d'Abbs P, Shaw G, Rigby H, Cunningham T, Fitz J. *An evaluation of the Gove Peninsula Alcohol Management System: a report prepared for the Northern Territory Department of Justice*. Darwin: Menzies School of Health Research, 2011.
31. Conigrave K, Proude E, d'Abbs P. *Evaluation of the Groote Eylandt and Bickerton Island Alcohol Management System*. Darwin: NT Department of Justice, 2007.
32. Port Augusta Alcohol Management Group. *Port Augusta Community Alcohol Management Plan 2010–2015: an integrated approach to alcohol use and misuse in our community*. Report no. 85/12ccs. Port Augusta, SA: Corporate and Community Services, 2010.
33. Margolis SA, Ypinazar VA, Muller R. The impact of supply reduction through alcohol management plans on serious injury in remote Indigenous communities in remote Australia: a ten-year analysis using data from the Royal Flying Doctor Service. *Alcohol and Alcoholism* 2008;43(1):104–10.
34. Margolis SA, Ypinazar VA, Muller R, Clough A. Increasing alcohol restrictions and rates of serious injury in four remote Australian Indigenous communities. *Medical Journal of Australia* 2011;194(10):503–6.
35. Gray D, Wilkes E. Alcohol restrictions in Indigenous communities: an effective strategy if Indigenous-led. *Medical Journal of Australia* 2011;194(10):508.
36. Queensland Government. *Alcohol management review: Yarrabah*. Brisbane: Department of Aboriginal and Torres Strait Islander Policy, 2006.
37. Glanz K, Rimer BK, Viswanath K. *Health behavior and health education: theory, research, and practice*. San Francisco, CA: John Wiley & Sons, 2008.
38. Smith K, Langton M, d'Abbs P, Room R, Chenhall R, Brown A. *Alcohol management plans and related alcohol reforms*. Brief 16, October 2013. Sydney: Indigenous Justice Clearinghouse, 2013.

# Enforcement and outcomes

---



# Chapter 19

## Liquor licensing legislation— Australian police perspectives

Roger Nicholas, Allan Trifonoff and Ann M Roche

Liquor licensing laws play a central role in shaping the supply of alcohol in ways that reduce harms (1). Liquor licensing legislation is enacted independently by each jurisdiction at the state/territory level in Australia, the central tier of Australia's three levels of government. Despite differences in the licensing legislation, there are strong common themes across all jurisdictions.

Effective enforcement of this legislation is as important as the legislation itself (2, 3). For enforcement to be effective, it needs to be ongoing, frequent, unpredictable, well publicised and perceived by the target groups (that is, licensees, staff of licensed premises and patrons) as highly likely to occur (4). Police and liquor licensing authorities have a central role in enforcing these laws and therefore their perspectives provide a unique insight into the effectiveness of current legislative arrangements and their enforcement and into potential improvements. It is also police, in the main, who deal with alcohol-related public order problems such as alcohol-related anti-social behaviour and violence, particularly in and around licensed premises (5, 6). Policing licensed premises is one of the most difficult tasks that police are required to undertake and is one that their training may not equip them well to perform (7, 8).

This chapter draws on research conducted with police and liquor licensing officials to learn more of their perspectives concerning aspects of Australia's liquor licensing arrangements that are working well, and potential improvements that could reduce alcohol-related harm in Australia.<sup>1</sup> Trifonoff et al. (9) interviewed police personnel involved in liquor licensing activities from each of Australia's eight states and territories. Semi-structured interviews were conducted with 53 police from metropolitan, regional and remote areas. Participants were drawn from specialist licensing enforcement units, alcohol policy areas, other policy/advice areas and local police area commands. They ranged in rank from constable to assistant commissioner. Interviews were undertaken in 2010 and the responses of the interviewees were de-identified to protect confidentiality. The respondents' perspectives reflect the legislative position at that time. This is significant because legislation is continually changing to reflect shifts in commercial and community needs, priorities and concerns.

### Getting the legislative balance right

The main role of liquor licensing legislation is to balance the commercial interests of the alcohol industry and its broader economic benefits with reducing harms related to drinking. This leads to inherent tensions. The interests of the alcohol industry may be best served by increasing alcohol availability (for example, by increasing trading hours) but this can also lead to increased harms (10).

<sup>1</sup> This chapter is based on a previously published report: Trifonoff A, Andrew R, Steenson T, Nicholas R, Roche A. *Liquor licensing legislation in Australia: part 3: police expectations and experiences*. Adelaide: Flinders University, National Centre for Education and Training on Addiction (NCETA), 2011.

The police interviewed by Trifonoff et al. (9) were emphatic and positive about the importance of their role in addressing community harms that stem from alcohol and containing problems associated with licensed premises. They placed great emphasis on preventing and resolving these problems and reported that police have become active players in the field of alcohol and community safety. From their perspective, their roles have expanded to involve not only dealing with problems after they have occurred ('downstream' responses) but also to include 'upstream' or preventative roles (1). These roles include tackling premises identified as problematic and managing community perceptions of safety and amenity.

Police strongly supported the principles of harm minimisation in relation to the liquor licensing legislation, particularly as they impact on public amenity and public safety issues. However, they also noted that where legislation aimed to reduce alcohol-related harm, there was often a simultaneous requirement to further the interests of the alcohol industry. Achieving this balance was regarded as a challenge by police: '[There is] a lot of stuff in there about harm minimisation, but...not...well I suppose it's not all that forceful. It's a lot about what the licensees may do...what they can do... but not what they have to do' (9:19).

Police respondents expressed concern about the proliferation of alcohol outlets in Australia, longer trading hours and the potential for increased harm from poorly run licensed premises. Many were of the view that liquor licensing regimes in Australia were driven primarily by commercial interests and market forces that favoured the interests of the alcohol industry over the concerns of police. The police felt that their influence on licensing decisions was swamped by the more politically powerful influence of the alcohol industry.

The National Competition Policy (NCP) was widely regarded by police respondents as having further tipped the balance of liquor licensing legislation in Australia towards the interests of the alcohol industry. From this perspective, by seeking to reduce anti-competitive forces, the NCP resulted in the liberalisation of pre-existing restrictions on the sale of alcohol, which were introduced to reduce harm.

The impact of commercial interests and market forces was particularly evident in relation to police objections to applications for new licences and changes to existing licences. The police were well aware of growing evidence about the adverse impact of increased numbers of licensed premises, greater density of licensed premises and extended trading hours on levels and patterns of alcohol-related harm. However, they indicated that it was difficult to apply this evidence to a specific proposal for a new licensed premises, expansion of an existing one or an application for extended trading hours. In many instances, police needed to prove that if a particular application was successful, it would, of itself, increase levels of harm—an almost impossible task. Furthermore, in raising these arguments police were often criticised for being anti-competitive and, by attempting to limit the expansion of opportunities to supply alcohol, were seen as favouring existing licensees. This perceived diminution of influence meant that rather than focusing on proactive activities that had substantial potential to prevent alcohol-related harm, it was felt that police sometimes undertook other less productive activities.

This power imbalance was particularly problematic in the area of legislative reform. The police saw it as critically important that their perspectives, and those of other enforcement agencies, were considered in the drafting of legislation. Otherwise, legislative changes that appeared to address critical problems but which, in reality, were unworkable and unenforceable could be implemented. This was particularly the case where practical issues of the burden of proof were not fully considered in the drafting of legislation. Police indicated that legislation that was difficult or impossible to enforce was unlikely to attract enforcement effort (9:7):

It has to be workable otherwise you might as well not have it.

There needs to be an examination of the police powers in order to make it easier for police to do their job. It seems as if a lot of the legislation was drafted without consideration being given to determine whether it is practical for police.

A related issue was the 'morphing' of licensed premises and precincts. Licensees are generally entitled to request changes to the conditions of their licences. Considered individually, these changes may constitute a relatively minor liberalisation of alcohol supply or a minor change of purpose for premises. However, over a period of time, a series of these changes can allow premises to move from a relatively benign category of licence (such as a restaurant licence) to one that allows a venue to operate as a more risky nightclub. When several licensed premises in the same precinct undergo this morphing process, the characteristics of the entire precinct can change and this can lead to a concentration of high-risk premises. Police respondents saw little capacity in Australian liquor licensing legislation to contextualise new licence applications or applications for a change of condition so as to take into account previous changes to that licence or its environs. This is because each application is considered on its own merits, rather than considering how an individual decision can contribute to aggregate levels of harm.

There also appears to be a divergence of views between police and parts of the retail alcohol industry concerning the entitlement to hold a liquor licence. Police indicated that some licensees tended to regard having a liquor licence as a right rather than a privilege (9:6):

Having a liquor licence is not a right, it's a privilege. It's a privilege that by law in this state can be withdrawn at any time. You quite often hear counsel for licensees in these proceedings talking about rights for this and rights for that, and there is no right. A licence by its very nature as a legal concept is not a right, it's a permission that's subject to qualifications. And I think that there could be some merit in considering inserting a provision in legislation that spells that out a little more clearly.

A further issue raised by some police was the inadequacy of penalties for licensees breaching liquor licensing legislation. There was a perception that, in many instances, minor monetary penalties had little impact on changing the practices of licensees and that the monetary value of the penalties should be increased to enhance licensee compliance. Licensed premises have been closed for short periods for breaching liquor Acts and have been fined, 'But in the scheme of things, both have been quite minimal and...it seems that most of them go back to doing pretty much what they were doing beforehand' (9:50); they 'tie you up in court for 12 months trying to get it heard, and by the time it gets heard...the magistrates think it's irrelevant and then you don't get much of a penalty anyway' (9:149).

## The complexity of the legislation

Liquor licensing legislation, the associated regulations, codes of practice and other industry standards in Australia are largely viewed by police as unnecessarily complex and therefore difficult to enforce. Over time, the legislation has been amended in response to emerging issues. This means that the legislation has become a 'patchwork quilt' of legislative intentions and, at times, these changes interact to produce outcomes never intended by legislators.

The complexity and frequent legislative changes make it difficult for both specialist licensing police and, in particular, general duties officers to remain abreast of all changes: '[The legislation] is not easy at all [to understand]. And that's the situation we've found.... If you're not actually using it all the time, and au fait with the provisions in it, then it's very, very difficult as a general uniformed police officer to implement the Liquor Act' (9:140).

This complexity is particularly problematic in the context of other research that has demonstrated a broader need to enhance the skills, knowledge and confidence of police in responding to alcohol-related problems in and around licensed premises (7).

One factor that may impact on how police see liquor licensing legislation is the fundamental difference between the way they perceive criminal law and administrative law. Liquor licensing legislation is largely administrative law, whereas police primarily focus on criminal law. The enforcement of administrative and criminal law entails different processes. Administrative law

contains more grey areas than criminal law and focuses on problem rectification and facilitating due administrative process. Criminal law, on the other hand, focuses on crime detection and punishment.

An area of ambiguity raised by the police concerned the respective roles of police and liquor licensing authorities in enforcing liquor licensing legislation. This was particularly evident in jurisdictions where enforcement and compliance roles were shared by police and liquor licensing authorities and where the respective roles were not spelled out in legislation.

## Specific areas of policing difficulty

### The problem of proving gross intoxication

A common theme among police was the challenge of dealing with gross intoxication, whether associated with licensed premises or not. It was reported to be a major impost on policing resources. All Australian liquor licensing legislation contains provisions making it an offence to serve alcohol to a grossly intoxicated person on licensed premises. Yet preventing this level of intoxication on licensed premises was described as one of the most difficult aspects of liquor law enforcement:

Realistically if we could reduce intoxication, which is the driver, we could have cops chasing robbers, not drunken louts. (9:9)

Proving intoxication has become ridiculous. I think that we are seriously flawed in this state where we have magistrates that don't necessarily understand what a police officer does. In this regard, when a police officer says that someone is mildly or otherwise intoxicated, I think they can make that judgement. (9:37)

Difficulties associated with proving the offence of serving alcohol to grossly intoxicated persons on licensed premises include:

- inadequate legislative definitions of gross intoxication
- the range of available defences for the offence
- the need to prove that a person served alcohol on licensed premises was affected by alcohol and not another drug
- difficulties with proving secondary supply to grossly intoxicated persons on licensed premises
- the need for police to remain on the licensed premises for a long period of time to observe grossly intoxicated patrons being served alcohol
- the fact that police observations of patron behaviour were not considered sufficient proof of gross intoxication
- having offences heard by magistrates who lack relevant expertise
- confusion between different definitions of intoxication for the purposes of liquor licensing, road traffic and public drunkenness legislation.

Police could see no straightforward solution to the problem of defining drunkenness for enforcement purposes. Several suggestions arose during the consultations. They included:

- enshrining a spectrum of intoxication levels in legislation
- reversing the onus of proof such that the defendant (the licensee and/or staff) is required to prove that a patron was not grossly intoxicated when served alcohol
- using patron breath analysis to determine the level of intoxication
- creating an offence for licensees/staff who permit a grossly intoxicated person to remain on licensed premises.



## Alcohol-related data collection challenges

The police regarded their ability to collect data on alcohol-related crime, public disorder and amenity problems as central to their ability to understand and monitor liquor licensing-related matters and to inform decisions of liquor licensing authorities. The capacity of police to capture the data varied substantially between jurisdictions.

Problems associated with the adequacy of data collection also impacted upon the liberalisation of alcohol supply arising from the NCP. The influence of the NCP can be counterbalanced if evidence shows that liberalisation is not in the public interest. The difficulty is that existing data capture and interpretation and predictive models cannot adequately highlight where liberalisation of alcohol markets is not in the public interest.

## The proliferation of packaged liquor outlets

Many police respondents raised concerns about current legislative provisions impacting on packaged liquor outlets that sell alcohol for off-premises consumption. These outlets have proliferated in most jurisdictions and supply large amounts of alcohol to the community. Police from some jurisdictions indicated that the majority of the alcohol-related problems they faced stemmed from takeaway alcohol sales: 'One of our greatest areas of concern is the amount of takeaway liquor that is consumed...and not only that, the amount of that which is actually responsible for the public place anti-social behaviours and also the anti-social behaviour which pervades our housing commission areas' (9:10).

There were two facets to this issue. The first was that, in most jurisdictions, police were unable to obtain wholesale alcohol sales data, which made it difficult for them to assess the impact of takeaway sales on crime and other problems in surrounding areas. Respondents asserted that having a legislated requirement for jurisdictions to produce and provide wholesale alcohol sales data would be of considerable benefit to police. The second issue was that as long as packaged liquor outlets operated in accordance with their licences, police were generally unable to intervene in their activities. This problem highlighted the need to focus liquor licensing legislation on total alcohol supply rather than individual licensed premises.

## Secondary supply to underage persons

Police respondents indicated that secondary supply<sup>2</sup> of alcohol to underage people, particularly at non-licensed locations, was difficult to address legislatively. Although some were concerned about the use of false identification by underage people to gain entry into licensed premises, most police indicated that the secondary supply of alcohol on licensed premises was not a major issue.

The supply of alcohol to minors in situations other than licensed premises was seen as more complex and problematic. Several respondents suggested that a major challenge for police was dealing with parents who had supplied alcohol to their children (9:39):

From my point of view, the only way to actually solve the problem is that if kids are going to consume alcohol legally, then the parent must stay with them. So this business of giving them a carton of beer, and saying 'go off to a party, have a good time' is not right. I think the only way that we could actually get on top of this problem is to say that that parent must stay with the children, who must drink under their supervision.

Respondents from jurisdictions that had legislated against secondary supply reported that there had been few successful prosecutions for this offence. It was further noted that the main benefit of this legislation was that it raised the profile of secondary supply in the community.

---

<sup>2</sup> Secondary supply refers to the sale or supply of alcohol to people under the age of 18 years (minors) by adults or other minors (1). At the time of the fieldwork by Trifonoff et al. (9), it was illegal in all jurisdictions for licensed premises to serve minors and for adults to purchase alcohol on behalf of minors for on-premises consumption. It was also illegal for adults to purchase alcohol for secondary sale to minors.

# What works well?

## Partnerships

Respondents viewed alcohol-related crime and disorder primarily as a policing issue, but they also recognised the pivotal preventive role of community groups and agencies. There was general recognition that a wide range of stakeholders could contribute to reducing alcohol-related harms, including the alcohol industry, local government, police, transport, and health and welfare authorities. Respondents indicated that alcohol-related crime and disorder problems should not be defined solely as a policing problem that could be solved merely by providing more police resources or 'smarter policing':

I would like to see a greater role recognised for other stakeholders. For example, local government, fire and rescue, ambulance, chamber of commerce, a whole range of entities are incredibly influential actors when it comes to the regulation of licensed premises. (9:5)

A possible solution is to ensure that there is greater engagement between local government and central [state] government in relation to more closely linking the liquor licensing application process with the planning development process. (9:43)

## Centralised licensing enforcement units

The move away from centralised and specialist liquor licensing enforcement functions within Australian police agencies, which occurred in the 1980s and 1990s, impeded effective liquor law enforcement (11). These changes occurred in response to the perceived narrow focus of centralised units and potential integrity and corruption issues (12). Police regarded the re-establishment of centralised units as having a range of benefits, including:

- the ability to access expert advice and guidance on the complexities of legislation
- the ability to train other personnel
- developing best-practice guidelines for policing licensed premises
- acting as repositories for data on incidents and police call-outs to licensed premises
- creating an easily accessible entry point for other agencies to liaise with police
- promoting a consistent and measured approach to the enforcement of liquor licensing matters across jurisdictions.

## Patron barring/banning/exclusion orders

There has been some movement by Australian states in recent years to give police or courts powers to ban problematic drinkers from a particular premises or all premises in a geographical area (13). The arrangements for barring/banning/exclusion orders vary between jurisdictions. In most jurisdictions any police officer can bar patrons for at least 24 hours. More lengthy orders need to be authorised by senior police, liquor licensing authorities or judicial authorities.

Police from jurisdictions that had implemented barring orders generally saw these as effective, particularly in reducing the impact of recidivist offenders:

The banning orders section of the Act is a very strong piece of legislation. This used to be the largest problem that police had to face and we did not have the legislation to deal with the problem. (9:40)

I think it's an excellent tool, very good. (9:107)

Nevertheless, some police expressed concern that the penalty for breaching a barring order was very low and in some jurisdictions the duration of banning orders was regarded as insufficient.

## Infringement notices

Many Australian jurisdictions have introduced infringement notices, written by police officers, which impose fines, usually for relatively uncomplicated offences committed by licensees or patrons. Police strongly supported the use of infringement notices. Their benefits include:

- their immediate impact and deterrent effect
- acting as a catalyst for behaviour change
- eliminating extended court processes
- reducing legal brief preparation and court time.

Some police interviewees were concerned about the relatively low penalties that applied for infringement notices, but generally felt that they were a positive initiative:

Effectively...they allow a very brief intervention with police, they allow police to meet their obligations and to take action...and to do it in a way that doesn't take the police off the street. (9:93)

Rather than having to go in front of the Liquor Board [to contest a complaint] in a month's time...if they get a fine there and then, then they are more likely to take some action to rectify the problem. (9:28)

## Lockouts

Lockouts (refusing entry to new patrons after a designated time) to stop patrons from migrating between venues were also seen as a potentially valuable strategy. The support for lockouts was tempered by observations that they should be:

- applied consistently across whole liquor licensing precincts (not just one or two premises)
- applied in conjunction with a range of other measures
- rigidly enforced.

This was consistent with some emerging research that suggests lockouts may be an effective tool when used in conjunction with other strategies (14–16):

A lockout would be beneficial purely because a lot of our offences happen in an eight block area because there're nightclubs pretty much on every street. And they walk from one place to the next; if they get thrown out of one because they're too intoxicated they just go around to another.... They'll cause issues at three or four places before we may be able to get to them.... [With] a lockout...there will be no people out on the street for them to stand around and talk to, and then they'll go home. (9:27)

## Risk-based licensing regimes

The police were supportive of risk-based licensing regimes that involve the imposition of additional licensing fees on premises most likely to be associated with alcohol-related problems. This includes larger premises, those that trade late, those with specific categories of licence and those with a history of liquor law infractions. Although there is not a strong empirical evidence base for the efficacy of these regimes (see Chapter 16), police supported them because they:

- imposed costs on the venues associated with most problems
- provided venues with the opportunity to reduce their licensing fees by implementing measures to minimise the risk of alcohol-related harms, such as rolling back the venue size or reducing trading hours
- encouraged licensees to accept greater responsibility for managing their licensed premises effectively.

## Conclusions

The police interviewed in the study by Trifonoff et al. (9) placed great emphasis on their roles in the prevention and resolution of alcohol-related problems. The study identified a need for police to have sufficient legislative support and appropriate tools to reduce alcohol-related harm and improve community safety. Some of the police described the current liquor licensing legislation in Australia as a 'toothless tiger' that has not only failed to evolve to address contemporary issues but in many cases has contributed to existing problems. Respondents believed much of Australia's liquor licensing legislation required reform if it was to enable them to better respond to alcohol-related harm.

This notwithstanding, police were encouraged by the potential for new tools to help them reduce alcohol-related harm. These included forming partnerships, centralised licensing units, banning/barring orders, infringement notices, risk-based licensing fees and lockouts. There is also a need to focus liquor licensing legislation on total alcohol supply rather than on the characteristics of individual licensed premises.

Overall, the key finding of the study was that, despite the logistical and legislative challenges, reducing alcohol-related harm is a priority issue for Australian police. However, in order to do this police require legislative and regulatory tools that better reflect the current understanding of the relationship between patterns of harm and alcohol availability. It was clearly the perception of police respondents that they were not being provided with the tools they needed to undertake this important work and meet community expectations.

## References

1. Nicholas R. *An environmental scan on alcohol and drug issues facing law enforcement in Australia 2010*. Hobart: National Drug Law Enforcement Research Fund, 2010.
2. Babor T, Caetano R, Casswell S, Edwards G, Giesbrecht N, Graham K et al. *Alcohol: no ordinary commodity: research and public policy*. 2nd edn. Oxford: Oxford University Press, 2010.
3. Loxley W, Tombourou J, Stockwell T, Haines B, Scott K, Godfrey C et al. *The prevention of substance abuse, risk and harm in Australia: a review of the evidence*. Perth: National Drug Research Institute, 2004.
4. National Drug Research Institute. *Restrictions on the sale and supply of alcohol: evidence and outcomes*. Perth: Curtin University, National Drug Research Institute, 2007.
5. Doherty SJ, Roche AM. *Alcohol and licensed premises: best practice in policing: a monograph for police and policy makers*. Payneham, SA: Australasian Centre for Policing Research, 2003.
6. Fleming J. *Rules of engagement: policing anti-social behaviour and alcohol-related violence in and around licensed premises*. Sydney: NSW Bureau of Crime Statistics and Research, 2008.
7. Martin P, Freeman J, Davey J. Officers' perspectives of policing alcohol-related incidents in and around licensed premises. *Police Practice and Research* 2013;14(3):193–204.
8. Roche A, Duraisingam V, Trifonoff A, Nicholas R. *In pursuit of excellence: alcohol and drug related workforce development issues for the Australian police into the 21st century*. Adelaide: Flinders University, National Centre for Education and Training on Addiction (NCETA), 2009.
9. Trifonoff A, Andrew R, Steenson T, Nicholas R, Roche A. *Liquor licensing legislation in Australia: part 3: police expectations and experiences*. Adelaide: Flinders University, National Centre for Education and Training on Addiction (NCETA), 2011.
10. Stockwell T, Chikritzhs T. Do relaxed trading hours for bars and clubs mean more relaxed drinking? A review of international research on the impacts of changes to permitted hours of drinking. *Crime Prevention & Community Safety* 2009;11(3):153–70.

11. Briscoe S, Donnelly N. *Liquor licensing enforcement activity in New South Wales*. Alcohol Studies Bulletin no. 4. Sydney: NSW Bureau of Crime Statistics and Research, 2003.
12. Ireland C. Alcohol and its contribution to violence: new directions for policing alcohol-related violence, crime and anti-social behaviour in New South Wales. In: Chappell D, Egger S, eds. *Australian violence: contemporary perspectives*. Canberra: Australian Institute of Criminology, 1995, pp. 155–80.
13. Room R. Individualized control of drinkers: back to the future? *Contemporary Drug Problems* 2012;39(2):311–43.
14. Jones C, Kypri K, Moffatt S, Borzycki C, Price B. *The impact of restricted alcohol availability on alcohol-related violence in Newcastle, NSW*. Crime and Justice Bulletin no. 137. Sydney: NSW Bureau of Crime Statistics and Research, 2009.
15. Palk G, Davey J, Freeman J. The impact of a lockout policy on levels of alcohol-related incidents in and around licensed premises. *Police Practice and Research* 2010;11(1):5–15.
16. Moffatt S, Mason A, Borzycki C, Weatherburn D. *Liquor licensing enforcement and assaults on licensed premises*. Crime and Justice Statistics paper no. 40. Sydney: Bureau of Crime Statistics and Research, 2009.

# Chapter 20

## Civilian licensing inspectors

Claire Wilkinson and Sarah MacLean

The police force is the authority that comes to mind for most people when considering the enforcement of liquor laws. However, civilian (non-police) licensing inspectors (hereafter civilian inspectors) also monitor compliance and enforce liquor laws. In Australia, each state and territory's liquor legislation provides for the appointment of civilian inspectors. The employment of civilian inspectors is not a new phenomenon. For example, in Victoria, civilian inspectors have been enforcing liquor laws since at least 1885 (1), although they were not active between the 1990s and 2009. Their duties have varied according to the scope of liquor laws—from monitoring hotel cleanliness and furnishings (2) to enforcing after-hours sale of alcohol (3). Although research has demonstrated the importance of enforcement for compliance with liquor laws (4), this work either focuses on enforcement by police only, or, where civilian inspectors have been considered within enforcement efforts (5, 6), the outcomes of their work are not analysed separately.

This chapter considers the role of civilian inspectors enforcing liquor laws. It outlines findings from interviews and document analysis concerning the formation of a civilian inspector agency in Victoria in 2009.<sup>1</sup> Documents reviewed were transcripts of relevant Victorian parliamentary proceedings and publications from the Compliance Unit of Responsible Alcohol Victoria (now replaced with the Victorian Commission for Gambling and Liquor Regulation), including newsletters, media releases and enforcement activity. Police enforcement activity was also reviewed using publicly available data. Key informant interviews were conducted with two key groups: the Compliance Unit (seven interviewees) and representatives of the liquor retail industry (11 interviewees). The researchers also planned to interview members of Victoria Police, but the Victoria Police Human Research Ethics Committee did not approve the application for this research. For further details on the research methods used, see Wilkinson and MacLean (7). Where quotes from Wilkinson and Maclean (7) have been used, full references are given, but some quotes are used for the first time. The chapter also reviews developments since this research was completed.

In 2009, a new agency, initially called the Compliance Unit (hereafter, the Unit), comprising 40 inspectors, was created. Its task was to monitor compliance and enforce liquor laws. Inspectors were given powers to enter and inspect licensed premises; request licensees and their staff to answer questions and provide information, documents, records and equipment; seize items as evidence; request proof of age documents and seize liquor from a minor; and issue infringement notices. Compliance inspectors did not have the powers to arrest anyone. When the Unit was established, it was promoted as freeing up police resources to allow police to focus on serious criminal activity (8, 9).

<sup>1</sup> This chapter includes data from Wilkinson C, MacLean S. Enforcement of liquor licence provisions: the introduction of civilian licence inspectors in Victoria. *Drugs: Education, Prevention and Policy* 2013;20(1):15–21. The Drug Policy Modelling Program, National Drug Research Institute, Sydney, funded the research.

## Enforcement focus

The Unit focused on whether licensees were displaying the correct signage, and other administrative provisions of the liquor law. As a result, breaches detected by the Unit were predominantly 'administrative'. For example, the three most frequent breaches detected in the Unit's first year of operation were failure to keep on site a copy of the 'the red-line plan' (a map showing exactly where alcohol is permitted to be sold and consumed), failure to produce this plan for inspection and failure to display the required signs (10). Unit interviewees argued that the Unit relieved police from enforcing administrative breaches and enabled police to concentrate on more serious breaches of liquor laws and other crimes. In the words of a liquor retail industry member:

We have been an industry that was being policed by the police, and they're under-resourced and I don't think they will ever be over-resourced. They are one of those groups that they will always need more people...It probably led to a scenario where they [police] were putting out fires...addressing places that had issues. So they probably got pretty lax in doing the ones that didn't.

Licensees generally agreed that prior to the Unit's formation compliance with licence provisions had been relatively lax. As one licensee articulated, 'we weren't pursuing our requirements as an industry very well. You know, we weren't being asked and we probably weren't delivering' (7:17). In 2009–10, the Unit made more than 26,500 inspections—each of Victoria's 19,000 licensed venues were inspected at least once, and many were inspected twice (10). On average, inspectors detected some part of the *Liquor Control Reform Act 1998* (Vic.) had been violated, 'a breach', at every second inspection (10). As one Unit interviewee illustrated, even low-risk venues break liquor laws:

One [breach] was about directors that weren't approved, which would never have been picked up by Victoria Police because it was in a place that they wouldn't have looked at. It was more of a low risk premise[s] but it still had issues with the people that were involved—some significant issues. So we took them down to VCAT [Victorian Civil and Administrative Tribunal] and they got disqualified and there was a \$20,000 fine.

Although some people argued the Unit would relieve police of administrative work (8, 9), police were rarely enforcing administrative licensing provisions before the Unit existed. For example, during the two years prior to the Unit, police enforced 'failing to display the required notices' only 29 times (11). With police rarely enforcing administrative licensing matters, it appears doubtful that establishing the Unit greatly freed up police time.

In the second year, the Unit targeted the 'most risky' venues as identified through its first-year inspections (12). Inspections decreased by nearly half, and breaches fell from 15,200 to 3950—an average of one breach per three inspections. The Unit attributed the decrease in breaches to increased compliance (13:38). Many industry interviewees also believed the Unit improved compliance. As one licensee stated:

I think it's helped liquor licensees to be far more aware of compliance. I think they take it [compliance] a lot more seriously now. I'm not saying they took it less seriously before but I think there are some checks and balances in place now to make sure that, you know, they are compliant. (7:18)

## Regulation model

The Unit's approach to regulation followed responsive regulation theory—an approach used in many regulatory fields (9). According to this theory, responses to breaches escalate with offence severity (14). Enforcement should first employ persuasive means to bring about compliance before resorting to coercive or punitive means (14). Initially, the Unit audited compliance, without taking action when a breach was detected; enforcement action was only taken after licensees were aware of their legal responsibilities:

Some venues hadn't seen a liquor licensing inspector for 10, 15 years. So, you know, if something isn't regulated then obviously we have to start with the basics and then work our way up. So that's why in the first year it was all fairly administrative and getting—educating licensees to know what their requirements were (Compliance Unit). (7:17)

Beyond auditing compliance, the most frequent enforcement action was to issue an on-the-spot compliance letter (10). These letters request that licensees voluntarily return their premises to a compliant state within a given timeframe. The letters may be used to track the compliance history of licensees, and can be used as evidence in disciplinary proceedings should non-compliance continue (15). The Unit issued 4500 compliance letters in its first year:

It was only when it was really extreme that they'd start issuing infringements. There were a lot of warnings issued, there were a lot of letters setting out compliance issues at the beginning, so once they'd done a sweep of the audits it was felt then everybody was on notice from there on in (Compliance Unit). (7:18)

In 2010–11, the Unit detected fewer breaches than in 2009–10. For example, in 2010–11, 750 compliance letters were issued, compared with 4500 in 2009–10 (16). In 2010–11, the Unit took more serious enforcement actions than in 2009–10 (10 criminal prosecutions in 2010–11 compared with four in the previous year).

## Enforcement of alcohol service laws

During the two-year study period, the Unit detected breaches relating to more than 60 different offences of the liquor law (17). Some offences may be more related to harm than others. For instance, increasing compliance with laws against the supply of alcohol to those underage or intoxicated may be more likely to reduce alcohol-related harms than ensuring licensees have the correct paperwork. A number of industry interviewees indicated that inspections of their venues were quick, and that documents were checked in back rooms, not where patrons were drinking:

They're not coming in and observing whether you're applying RSA [responsible service of alcohol], what your patron numbers are like, [whether] there's intoxicated patrons on the street or in the venue—in fact they're not designated to do that. That's still, as far as I'm aware, a police matter (liquor retail industry). (7:18)

Unit interviewees expressed a somewhat different view, claiming that inspectors actively enforced breaches, such as the sale of alcohol to a person who is drunk, sometimes in conjunction with police, and provided examples where they had taken action to address identified breaches. Nonetheless, the Unit tended not to be active in prosecuting alcohol sales to underage people:

We certainly administer and enforce serving of intoxicated people. There's been plenty of instances [where that has occurred]. But the minors—look, there's a certain sensitivity around that, and I think that hasn't been a strong focus for us in the first two years (Compliance Unit). (7:18)

Even before the re-introduction of civilian inspectors in Victoria in 2009, their capacity to reduce alcohol-related harm was questioned. The majority of industry interviewees for our study believed that the government created the Unit as a response to media portrayals of 'alcohol-fuelled violence':

My thoughts are that the Compliance Inspectorate was put together almost as a knee-jerk [response] to the alarmist headlines the newspapers were showing in regards to the misuse and abuse of alcohol (liquor retail industry).

One argument against the formation of a civilian inspector enforcement agency is that the state should increase resources for police rather than employing civilians. When the legislative Bill to enact the Unit was introduced into the Victorian Parliament, an Opposition member said:



These inspectors will not be able to tackle the issues that are the heart of alcohol-related violence. Civil compliance inspectors will not keep our streets safe in the early hours of the morning. Bureaucrats with biros are no substitute for cops with cuffs. (18:445)

## Developments since 2011

A number of changes to the Unit have taken place since data collection for the Wilkinson and MacLean (7) study was completed. The most dramatic development occurred in February 2012, when the state alcohol authority was transferred from the Department of Justice to the newly formed Victorian Commission for Gambling and Liquor Regulation. Inspectors initially enforced only liquor licences, but the liquor and gambling functions have since been merged (19). In 2013, the Unit streamlined its organisational structure and the number of inspectors designated to regional areas was reduced from 12 to five (19). These changes mean that an expansion of inspector responsibilities to include regulation of gambling has occurred alongside a decrease in numbers of rural staff (information on overall numbers of inspectors was not available).

The Unit continued a targeted inspection program of venues that posed the greatest risk. Inspections focused on venues that close after 1 am (in 2010 the focus was trading after 11 pm) and sporting clubs (13), in addition to premises that already had an enforcement action against them and off-premise liquor sales outlets. Sports club are considered risky venues because of their high use of volunteers for short periods. The Unit needs to ensure volunteer staff members acquire the necessary knowledge to serve alcohol. In 2011 it was decided to exempt small bed and breakfast operators, hairdressers, butchers, florists and gift makers from requiring a liquor licence because they were deemed to be low-risk small businesses. The exemption is conditional on businesses complying with a range of conditions, such as not supplying liquor to a minor (13). This means that inspections of non-licensed venues are now required in order to detect those selling alcohol outside the state's legal requirements.

Since the Wilkinson and Maclean study (7), the Unit's focus may have slightly changed towards prosecuting more serious breaches, given that the number of criminal prosecutions has slightly increased. However, the number of warning notices, risk management discussions and voluntary compliance letters—the enforcement methods that made up the bulk of enforcement activity in the Unit's first two years—are not reported at all (20:Appendix 4). The majority of criminal prosecutions were for trading without a licence, and only one was for allowing a minor into a venue (20). The majority, therefore, were breaches relevant to not paying liquor taxes—in line with the Unit's administrative focus—rather than detecting sales of alcohol to minors or the intoxicated.

## Discussion

Although the Unit increased compliance with administrative elements of Victoria's liquor law, it appears that it was limited in its capacity to reduce the public harms that ensue when responsible service of alcohol provisions are not adhered to; for example, there was a low incidence of prosecutions for anyone selling alcohol to anyone who is drunk or underage. The issue here is not the powers of the Unit but the priority of enforcing offences related to the service of alcohol, as well as the resources made available to the Unit.

One way for civilian inspectors to detect whether a venue is selling alcohol to someone who is drunk is to spend more time in venues making observations of service practices. Such intensified enforcement has been found to reduce the rate of adolescent drunkenness among weekly drinkers (21). Schelleman-Offermans et al. (21) document that in the Netherlands inspections of on-premises venues identified as particularly attracting youth rose from one per year to at least eight inspections over a two-year period. Schelleman-Offermans and her team's finding of reduced adolescent drunkenness during this period suggests that increasing the number of inspections increases

compliance with laws against selling alcohol to underage drinkers. Internationally, however, it appears that civilian inspectors are typically 'spread thin', with small numbers to cover many licensed establishments (22). This is a challenge to their potential effectiveness in reducing alcohol-related harms. To illustrate, in the Netherlands, Schelleman-Offermans reported that approximately 40 inspectors were employed nationwide (21). Victoria, a state more than five times geographically larger than the Netherlands, but with less than one-third of the population, also had 40 inspectors. With more than 19,000 licensed premises, each Victorian inspector would be responsible for 475 venues. A 2005 report from the United States estimated the number of inspectors per state ranged from three to 260, with a median of 34; on average each inspector was responsible for monitoring the activities of approximately 268 licences (23:5).

Furthermore, the ratio of inspectors to the number of licensed premises needs to be monitored. When liquor laws are liberalised, resources for the enforcement agency also need to increase. In Ontario, Victoria and New Zealand in the mid-1990s, the number of licences rose dramatically as the industry was deregulated, but the number of liquor inspectors fell (24–26). Clearly, the number of inspectors required depends on the role they are undertaking, but these types of ratios of inspectors to licence numbers seem too low to allow for regular inspections, or to be a deterrent to breaking liquor laws.

Particularly in large jurisdictions, where licensed venues can be very far apart, the geographical organisation of a civilian enforcement unit needs to be considered. Civilian inspectors do not necessarily need to be based geographically close to the venues they inspect, but they do need to travel to all licensed venues across the state, because enforcement (observation of sales) and sanctions are crucial for compliance with liquor laws. One benefit of regionally based civilian inspector teams is that knowledge of local circumstances and local relationships between enforcement staff and licensees may enhance compliance. In the Netherlands, the regional location of DHT-teams (drinks, hospitality, tobacco), with central support (strategy, development, legal assistance), was important in facilitating compliance checks (S van Ginneken, pers. comm., 23 July 2010). However, decentralised organisation risks regulators becoming too close to those they are regulating, with the potentially greater risk of corrupting or co-opting inspectors (27).

We noted above that very few charges for offences relating to alcohol sales to the intoxicated or to underage drinkers are prosecuted (22). In one study, for example, of the 25 observations where the supply of alcohol to underage people was observed, sanctions were imposed in only seven instances (28 per cent) (21). Several studies have noted that inspectors struggle to prosecute sales to underage or intoxicated people because the burden of proof is too hard: they have to prove the salesperson knowingly sold alcohol to someone who was underage or drunk (21). A Victorian study found that more than 20 per cent of underage drinkers in inner-Melbourne in 2009 had drunk alcohol in a licensed venue in the previous 12 months (28). This suggests that enforcement of sales to underage drinkers is very inadequate in those localities. A report by the Victorian Auditor-General (17:40) criticised the Unit for not taking up a recommendation to use 'underage operatives' to test whether sales were being made to underage people. The report concluded, 'This is a significant missed opportunity to address the illegal supply of alcohol to minors' (17:40). Inspection methods that employ people who are under-aged, or appear so, and actors who pretend to be intoxicated can be used to test sales to minors and the intoxicated.

Responsive regulation theory highlights the importance of building productive relationships between inspectors and those they are regulating. Cooperative approaches, such as dialogue, training and support, are fostered as the means to achieve compliance. Enforcers need only resort to punitive methods when cooperative methods do not yield results (14:253). A risk to this relationship is that inspectors may be seen by some to cover superficial and unimportant matters—such as correct paperwork—and to unduly interfere with small business (22), whereas police are seen to concentrate on those offences that relate to public order. In Victoria, there was strong opposition by the regulated industry against the increased enforcement of restrictions—opposition that gathered favourable public notice in the run-up to an election period. The Unit was held responsible for the closure of The Tote, a very popular on-premises venue (29, 30), largely because the inspectors enforced aspects of

liquor laws that had previously been ignored. The Tote's closure led to widespread negative publicity about licensing provisions for late-night live music venues in Victoria and may have made the job of the Unit in enforcing compliance more difficult. Similarly, in the Netherlands, negative press about confrontation between inspectors and the public was seen as a contributing factor to inspectors becoming less effective (S van Ginneken, pers. comm., 23 July 2010). As Mascini and Van Wijk (31) argue, 'negative unintended consequences are not restricted to businesses targeted for a deterrent approach by inspectors. They often occur even when inspectors wish to act persuasively because regulatees tend to perceive their behaviour as more coercive than intended by inspectors' (31:42).

Coordination between police and civilian enforcement agencies is essential to ensure that all breaches of licensing compliance are picked up (6, 22), particularly when agencies are located separately. A review into the effectiveness of Victoria's enforcement of liquor legislation by the Victorian Auditor-General concluded, 'While Victoria Police and the Compliance Unit are respectively targeting anti-social behaviour and minor breaches of the Act by licensees, there is no whole-of-government enforcement strategy to address unlawful supply, which is the cause of alcohol-related harm' (17:35). A New Zealand study found that regular liaison meetings between the three agencies involved in enforcement (inspectors, specialised licensing police and public health officers) were important 'in welding together the three roles and perspectives, often leading to joint strategies and proactive initiatives' (26:182): 'Close contact and meeting regularly as a group were associated with rationalisation of effort and resources, more routine inspections, a greater focus on host responsibility practices, a proactive approach with licensees and united response to incidents or poorly managed premises' (26:181). Similarly, in New Zealand, regular meetings between the licensing board and police supported mutual controls of licensed premises as part of a community alcohol prevention program that reduced violent crimes (32). An overarching enforcement strategy is required to guide the work of police and civilian inspectors. Civilian inspectors and police enforcement statistics should be shared between agencies and made available in a comparable format so that an overall picture of regulatory enforcement is available.

We have shown that the Unit has focused on administrative breaches of liquor licensing provisions rather than the inappropriate sale of alcohol. Furthermore, a review of police activity directly prior to the introduction of the Unit shows that the police had never really been preoccupied with enforcing administrative breaches and it was therefore unlikely that the Unit freed up police resources to focus on the inappropriate supply of alcohol. How, then, does an enforcement unit focus on the inappropriate supply of alcohol? One option is to include a health authority in the regulatory team. The New Zealand study found that outcomes for alcohol-related harms were better when health officers, in addition to police and civilian inspectors, inspected venues (26:183). This resulted in 'rich connections' between regulatory responsibilities for the sale and supply of alcohol on the one hand and the promotion of responsible service of alcohol on the other (26).

## Conclusions

Civilian inspectors may have an important role in reducing the harm associated with alcohol and licensed venues. However, their potential to minimise harms depends on the scope of their powers and the size, frequency and coverage of operations. Furthermore, given potential overlap in duties, how civilian inspectors operate alongside police will influence their effectiveness. At a minimum, in a licensing system the authority issuing licences needs to check documentation. It may also play a role in reducing alcohol-related harms by deterring sales of alcohol to minors and the intoxicated. In Victoria, further research could examine whether (as the industry becomes more compliant with administrative provisions) the regulatory body, the Victorian Commission for Gambling and Liquor Regulation, increases covert observation of alcohol sales, as well as how the additional responsibility for inspection of gaming venues has impacted on the Unit's work.

## References

1. Victorian Government. *Review of the Liquor Control Act 1968: report*. Melbourne: Government Printer, 1986.
2. Liquor Control Commission. *Liquor Licensing Commission report and statement of accounts, 1968/69*. Melbourne: Liquor Control Commission, 1968/69.
3. Harden M. *Melbourne: the making of a drinking and eating capital*. Melbourne: Hardie Grant Books, 2009.
4. Jeffs BW, Saunders WM. Minimizing alcohol related offences by enforcement of the existing licensing legislation. *British Journal of Addiction* 1983;78(1):67–77.
5. Craze L. An analysis of enforcement and operational information. In: Stockwell T, ed. *An examination of the appropriateness and efficacy of liquor-licensing laws across Australia: alcohol misuse and violence*. Canberra: Commonwealth of Australia, 1994, pp. 85–103.
6. Trifonoff A, Andrew R, Steenson T, Nicholas R, Roche A. *Liquor licensing legislation in Australia: part 3: police expectations and experiences*. Adelaide: Flinders University, National Centre for Education and Training on Addiction (NCETA), 2011.
7. Wilkinson C, MacLean S. Enforcement of liquor licence provisions: the introduction of civilian licence inspectors in Victoria. *Drugs: Education, Prevention and Policy* 2013;20(1):15–21.
8. Victorian Government Minister for Consumer Affairs. Compliance Directorate cracking down on licensed venues. 2009. Accessed 26 February 2014 <<http://archive.premier.vic.gov.au/component/content/article/8660.html>>.
9. Responsible Alcohol Victoria. *Compliance and enforcement policy*. Melbourne: Responsible Alcohol Victoria, 2009.
10. Responsible Alcohol Victoria. *Responsible Alcohol Victoria Compliance Directorate statistics to 30 June 2010*. Melbourne: Department of Justice, 2010.
11. Victoria Police. Victoria Police 2008/2009 crime statistics. 2009. Accessed 26 February 2014 <[www.police.vic.gov.au/content.asp?Document\\_ID=782](http://www.police.vic.gov.au/content.asp?Document_ID=782)>.
12. Victorian Government Minister for Consumer Affairs. Opposition wrong again on liquor licensing. 2010. Accessed 26 February 2014 <<http://archive.premier.vic.gov.au/newsroom/10508.html>>.
13. Victorian Department of Justice. *Annual report 2010–2011*. Melbourne: State Government of Victoria, 2011. Accessed 2 July 2013 <[www.justice.vic.gov.au/utility/annual+reports/annual+report+2010-11](http://www.justice.vic.gov.au/utility/annual+reports/annual+report+2010-11)>.
14. Graham K, Homel R. *Raising the bar: preventing aggression in and around bars, clubs and pubs*. Devon: Willan Publishing, 2008.
15. Victorian Commission for Gambling and Liquor Regulation. Enforcement actions. 2013. Accessed 9 September 2013 <[www.vcglr.vic.gov.au/home/laws+and+regulations/compliance+and+enforcement/enforcement/enforcement+actions](http://www.vcglr.vic.gov.au/home/laws+and+regulations/compliance+and+enforcement/enforcement/enforcement+actions)>.
16. Responsible Alcohol Victoria. *Responsible Alcohol Victoria Compliance Directorate statistics; 1 July to 31 May 2011*. Melbourne: Department of Justice, 2011.
17. Victorian Auditor-General. *Effectiveness of justice strategies in preventing and reducing alcohol-related harm*. Melbourne: Victorian Government, 2012. Accessed 12 February 2014 <[www.audit.vic.gov.au/reports\\_and\\_publications/latest\\_reports/2011-12/20120620-alcohol.aspx](http://www.audit.vic.gov.au/reports_and_publications/latest_reports/2011-12/20120620-alcohol.aspx)>.
18. Parliament of Victoria. *Parliamentary debates: Legislative Assembly, Fifty-sixth Parliament, first session, Thursday, 26 February 2009 (extract from book 2)*. Melbourne: Victorian Government Printer, 2009, pp. 433–512.

19. Willingham R. Rural liquor inspectors abolished. *Age*. 12 April 2013.
20. Victorian Commission for Gambling and Liquor Regulation. *Annual report 2011–2012*. Melbourne: Victorian Commission for Gambling and Liquor Regulation, 2012.
21. Schelleman-Offermans K, Knibbe RA, Kuntsche E, Casswell S. Effects of a natural community intervention intensifying alcohol law enforcement combined with a restrictive alcohol policy on adolescent alcohol use. *Journal of Adolescent Health* 2012;51(6):580–7.
22. Stockwell T, ed. *An examination of the appropriateness and efficacy of liquor licensing laws in Australia*. Canberra: Australian Government Publishing Service, 1995.
23. National Highway Traffic Safety Administration. *The role of alcohol beverage control agencies in the enforcement and adjudication of alcohol laws*. Washington, DC: US Department of Transportation, 2005.
24. Parliament of Victoria. *Parliamentary debates, Fifty-third Parliament, second session: Legislative Assembly*. Volume 441, 27 October 1998. Melbourne: Victorian Government Printer, p. 747.
25. Solomon R, Prout L. A summary of provisions contained in Australian liquor laws of possible relevance to violence. In: Stockwell T, ed. *An examination of the appropriateness and efficacy of liquor-licensing laws across Australia: alcohol misuse and violence*. Canberra: Commonwealth of Australia, 1994, pp. 57–83.
26. Hill L, Stewart L. *The Sale of Liquor Act, 1989: reviewing regulatory practices*. *Social Policy Journal of New Zealand* 1996;7:174–90.
27. Levi R, Valverde M. Knowledge on tap: police science and common knowledge in the legal regulation of drunkenness. *Law & Social Inquiry* 2001;26(4):819–46.
28. MacLean S, Ferris J, Livingston M. Drinking patterns and attitudes for young people in inner-urban Melbourne and outer-urban growth areas: differences and similarities. *Urban Policy and Research* 2013;31(4):417–34.
29. Roberts J. The Tote: a case of liquor licensing downing one too many. *Age*. 19 January 2010.
30. Adams C. The Tote to close doors in Collingwood, due to tough new Melbourne licensing laws. *Herald Sun*. 14 January 2010.
31. Mascini P, Van Wijk E. Responsive regulation at the Dutch Food and Consumer Product Safety Authority: an empirical assessment of assumptions underlying the theory. *Regulation and Governance* 2009;3(1):27–47.
32. Wallin E, Norström T, Andréasson S. Alcohol prevention targeting licensed premises: a study of effects on violence. *Journal of Studies on Alcohol* 2003;64(2):270–7.

# Chapter 21

## Effective measures for Dealing with Alcohol and the Night-Time Economy (DANTE)

Peter Miller, Jennifer Tindall, Daniel Groombridge, Christophe Lecathelinais, Karen Gillham, Emma McFarlane, Florentine Martino, Nicolas Droste, Amy Sawyer, Darren Palmer and John Wiggers

Excessive alcohol consumption is a major cause of social disorder and illness in Australia. One particular set of problems is associated with the night-time economies (NTEs) of urban and regional centres, which cause substantial community concern and are a considerable drain on police, community and health resources. Alcohol has been identified as a factor in around three-quarters of assaults and incidents of offensive behaviour on the street (1). Several issues contribute to the levels of short-term harm associated with risky drinking, including excessive consumption at licensed premises, consumption in public areas, and lack of transport and security in entertainment precincts (2, 3); drinking before going to licensed venues (4, 5); the density of trading outlets (6–9); and the length of trading hours (10–15). More than half of all offences occurring on the street in Australia have been associated with licensed premises (1). A complex range of factors increases risky drinking and associated harms on licensed premises, including aspects of patron mix; levels of comfort, boredom and intoxication; promotions that encourage mass intoxication; and the behaviour of security/bouncers (2). Violence has also been shown to be perpetuated by poor venue management, lax police surveillance, lack of transport options for patrons, and inappropriate bureaucratic controls and legislation (3). However, the evidence base remains small and more rigorous evaluations of interventions are required.

This chapter describes the findings of a large, multi-site study—Dealing with Alcohol and the Night-Time Economy (DANTE)—which compared the effectiveness of interventions implemented in two large regional Australian cities (Geelong and Newcastle).<sup>1</sup> Geelong and Newcastle are highly comparable in terms of their social and demographic histories and characteristics. However, very different interventions were implemented to try to reduce alcohol-related harm in the community, ranging from voluntary/collaborative to regulatory/mandatory approaches. As such, the chance to compare the two cities during a period of legislative change presented a unique opportunity. This chapter briefly reviews the methods used, before presenting key findings and discussing them in light of other research and policy issues.

### Geelong

Geelong is a city of about 205,000 people and is growing at 1.1 per cent per annum. Located 70 kilometres from Melbourne, it is both a regional centre and a suburb of Melbourne, with more than 11,000 people commuting to the capital every day.

<sup>1</sup> This is a project supported by a grant from the Australian Government Department of Health through the National Drug Law Enforcement and Research Fund (NDLERF). Information in this chapter has previously been published in Miller P, Tindall J, Sonderlund A, Groombridge D, Lecathelinais C, Gillham K et al. *Dealing with Alcohol and the Night-Time Economy (DANTE): final report*. Geelong, Vic.: Deakin University and Hunter New England Population Health for the National Drug Law Enforcement Research Fund, 2012.

In Geelong, as many as 25 initiatives aimed at improving safety in and around licensed venues have been implemented in the past 15 years (16). None of these interventions have included a fully developed research component. Many of the Geelong projects have been implemented by engaging participants and developing ownership of the project. Table 21.1 outlines the major interventions implemented between 1990 and February 2011, the period of this study.

**Table 21.1: Description of alcohol-related interventions implemented in Geelong, Victoria**

Name of intervention	Date implemented	Description
Liquor accord	1991	Agreed set of interventions and regular meetings between police, licensees and other stakeholders
Safe taxi rank	2006	Designated taxi rank staffed by security guards between 1 am and 6 am Saturday and Sunday mornings
Night Watch Radio Program	March 2007	Connection of security staff via radio with relevant personnel
ID (identification) scanners	October 2007	Matches ID images to photographs to detect fake IDs
Just Think	June 2008	Local celebrities endorsing 'safe' drinking patterns and reduced violence
Operation Nightlife 1	January 2007	Maximum police visibility during high-risk hours
Operation Nightlife 2	June 2009	Improved radio contact between police and licensees
Safe Streets Taskforce	December 2008	Increased police visibility
Operation Razon	April 2008 –	Undercover police at licensed venues
Final integration of ID scanners/ Night Watch Radio Program police scanner system	November 2009	Victoria Police, City of Greater Geelong, Nightlife Association
Fine strategy	July 2010	Primary focus on using fines, rather than arrests, to deal with anti-social behaviour
So You Know campaign	August 2010	Awareness posters implemented
Risk-based licensing	January 2011	New licensing regime, which differentiates between venue type, trading hours and size. Fees increase with breaches of licence

## Newcastle

The greater Newcastle metropolitan area is 160 kilometres north of Sydney, in New South Wales, and is the second-most populated area in the state. It has an estimated population of 570,000 people (2006) and covers five local government areas (Newcastle, Lake Macquarie, Cessnock, Maitland and Port Stephens). It is a regional coastal area with an economy based primarily on manufacturing, wine and coal mining. Its average annual growth rate is 1.17 per cent (17).

On 20 March 2008, following an escalation of alcohol-fuelled violence, anti-social behaviour and associated community complaints, the New South Wales Liquor Administration Board imposed additional conditions on 15 hotels in Newcastle's main entertainment precincts. These conditions (Table 21.2) were imposed under s. 104 of the Liquor Act 1982 (NSW), legally binding licensees to comply. At the time of writing, 11 of the original 14 venues were trading. In July 2010, 11 conditions were also imposed on six hotels in the Hamilton area (the adjoining suburb, which has a small entertainment district). The conditions were similar to those in Newcastle, but did not include the early closing times.

**Table 21.2: Section 104, *Liquor Act 1982* (NSW), conditions imposed on Newcastle hotels in March 2008**

<b>Trading restrictions</b>
<ul style="list-style-type: none"> <li>• Reduced trading hours: all premises are prohibited from trading later than 3.30 am</li> <li>• Lockout: patrons must be prohibited from entering after 1.30 am</li> </ul>
<b>Alcoholic drink restrictions</b>
<p>Venues are prohibited from supplying the following alcohol products after 10 pm:</p> <ul style="list-style-type: none"> <li>• shots</li> <li>• mixed drinks with more than 30 mL of alcohol</li> <li>• RTD (ready to drink) drinks with an alcohol by volume greater than 5%</li> <li>• Not more than four drinks may be served to any patron at the one time</li> </ul>
<b>Responsible service of alcohol (RSA) actions</b>
<p>Additional RSA actions include:</p> <ul style="list-style-type: none"> <li>• free water stations on all bar service areas</li> <li>• RSA marshal from 11 pm until closure (sole responsibility of supervising RSA practices and consumption)</li> <li>• no stockpiling of drinks and a patron may only purchase up to four drinks at the one time</li> <li>• ceasing the sale and supply of alcohol at least 30 minutes prior to closing time</li> </ul>
<b>Compliance audits</b>
<ul style="list-style-type: none"> <li>• Independent compliance audit at least every three months</li> </ul>
<b>Management plan</b>
<ul style="list-style-type: none"> <li>• Developing and submitting a management plan to the Liquor Administration Board</li> </ul>
<b>Communication strategies</b>
<ul style="list-style-type: none"> <li>• All venue staff to be notified in writing within 14 days of the imposition date of the conditions and their responsibilities as venue staff</li> <li>• All venues subjected to the conditions must enter into an agreement to share a radio network enabling management and security to communicate with each other</li> </ul>

Five distinct arms of research were conducted in both Newcastle and Geelong:

- community surveys (computer assisted telephone interviews), N=694
- secondary data (10 years retrospective, two years prospective):
  - » emergency department attendance records
  - » Victoria and New South Wales police (assaults, property damage and drink-driving)
- patron interviews (10 pm–3.30 am over 18 months), N=3949
- venue observations (quarterly, structured observations of 35 licensed late-night venues), N=129
- key informant interviews (licensees, security workers, bar workers, community workers, police and health professionals), N=123.



## Results

Major findings are presented here. Findings for property offences, drink-driving, ambulance attendances and from key informants can be accessed in the main report (18).

Major findings from the DANTE study are reported, including crime, emergency department attendances, telephone interviews, patron intercept and observational data. Although data were collected from other sources (for example, ambulance and key informant), such data are not reported due to either the lack of data availability in both cities or the depth of information collected and analysed. Some crime data have also been omitted for these reasons or due to the likely impact of street policing activities influencing the data.

### Telephone interviews

Computer assisted telephone interview (CATI) surveys were conducted between March and May 2010 (following the implementation of the strategies laid out in Tables 1 and 2). The CATI survey examined public perceptions of safety and alcohol-related crime, and attitudes towards alcohol harm-reduction strategies in the two cities; and differences based on city of residence and patronage of the precinct in the last year. Overall, 693 people completed the survey, which represented a 52.7 per cent response rate. Table 21.3 shows community perceptions of alcohol-related crime, highlighting that most respondents (89.7%) believed that alcohol was a problem in their entertainment precincts. More than half of the people (54.7%) who had been into venues after 10 pm in the past 12 months (patrons) had personally witnessed or been involved in a non-physical or physical argument.

Respondents were also asked to indicate their support for strategies to reduce alcohol-related harm (Table 21.4). High levels of support were found for most of the strategies, with drink-driving and enforcement approaches being the most popular. Increasing visible enforcement of venues received the most support (96%), with increased server liability receiving the least (28.1%). Most respondents (71.1%) favoured restricting access to alcohol by reducing the trading hours of late-night venues in high-risk areas, and 76.7 per cent supported mandatory lockouts. Only 8.1 per cent of respondents thought that venues should be open after 3 am.

In addition to the data reported in Table 21.4, there were no significant differences between the cities in terms of supporting reduced trading hours and lockouts, although there were significant differences in support for the times of such strategies. Newcastle respondents supported earlier closing (28.5% vs 11.7%,  $p < 0.0001$ ) and lockout times (61% vs 36%,  $p < 0.0001$ ) compared with Geelong.

Patrons were generally less supportive of strategies aimed at restricting the supply of alcohol compared to non-patrons (Table 21.4). While more than half the patrons supported reduced trading hours, significantly more non-patrons supported the measure (55.1% vs 79.8% respectively;  $p < 0.0001$ ). Non-patrons were also less likely to support mandatory lockouts (67.9% compared to 81.6% for non-visiting respondents,  $p = 0.002$ ) and restrictions in venue density (37.9% compared to 60% for non-visiting respondents,  $p < 0.001$ ).

The CATI survey demonstrated that, on the whole, people in Geelong and Newcastle held similar attitudes towards alcohol-related problems. Community members from Geelong and Newcastle perceived alcohol as a significant social problem in entertainment precincts and support most of the evidence-based alcohol harm-reduction strategies. The minimal difference between the study areas demonstrates that Australian regional cities may be similar in their perceptions and views. The study also demonstrates strong community support for measures that reduce the availability of alcohol in the community.

**Table 21.3: Perceptions and experiences of crime in the main entertainment precincts**

Item	Total % (693)	% Live in each city			% Patron of premises in the last year		
		Geelong (n = 318) 95% CI	Newcastle (n = 376) 95% CI	P <0.01	Patron (n = 247) 95% CI	Non-patron (n = 446) 95% CI	P <0.01
Believed that alcohol is a major problem in the precincts	89.7	90.1 [84.8–93.7]	89.4 [84.2–93.1]	–	85.6 [78.1–91]	91.9 [87.9–94.7]	NS*
Mean per cent of crime in the entertainment precincts believed to be alcohol-related	63.3	63.6 [60.3–67]	63.1 [60–66.3]	–	58.7 [54.7–62.7]	66 [63.2–68.8]	0.003
Alcohol consumed at licensed premises in precinct contributes large proportion of crime	76.5	76 [69.2–81.7]	76.9 [70.5–82.3]	–	68.3 [59.6–76.1]	80.9 [75.7–85.3]	NS
Witnessed/involved in a non-physical or physical argument in entertainment precinct	51.5	50.1 [38.2–61.8]	52.7 [41.3–63.6]	–	54.7 [44.3–64.5]	^	^
Never walk alone in precinct after dark	67.7	66.3 [59.4–72.8]	68.9 [62.3–74.9]	–	46.1 [37.5–55.1]	79.6 [74.4–83.9]	<0.001
Feel very unsafe/unsafe walking alone in the precinct area after dark	21.5	21.8 [16.3–28.5]	21.3 [16–27.6]	–	36.6 [28.1–46.1]	13.3 [9.8–17.7]	<0.001

– Non-significant at p-value (<0.01)

^ Non-physical argument and physical assault questions were only asked of respondents who reported visiting a premises in the main entertainment precinct after 10 pm

\* Not Significant

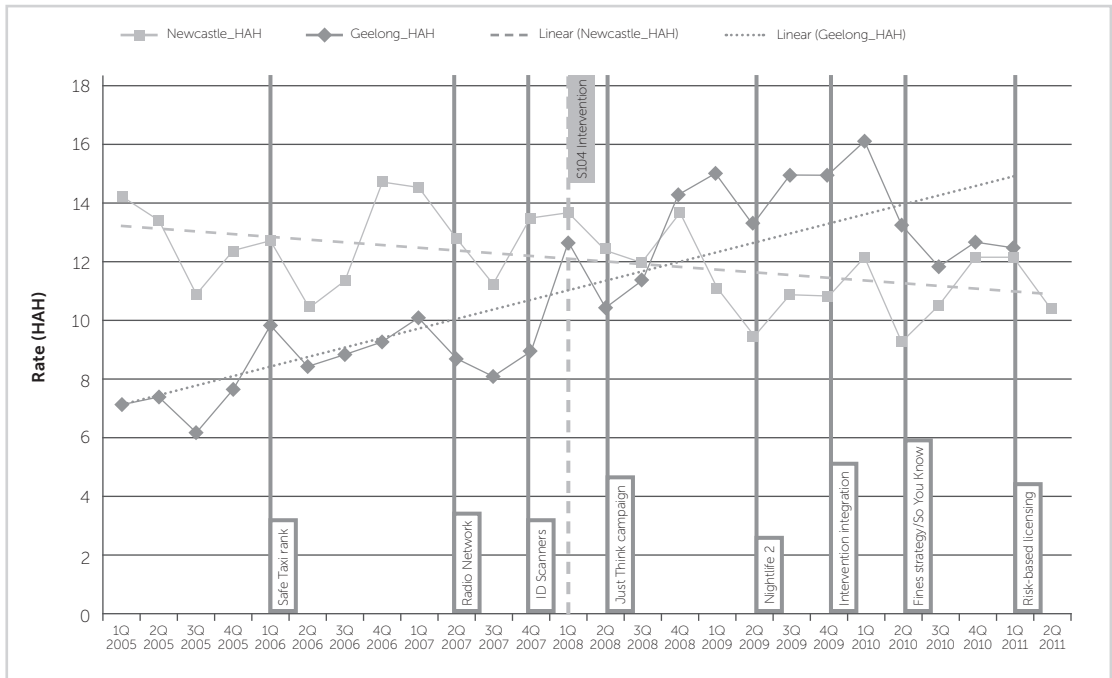
**Table 21.4: Support for evidence-based strategies targeting alcohol-related harm in entertainment precincts**

Strategy	Total % (693)	% Live in each city			% Patron of premises in the last year		
		Geelong (n = 318) 95% CI	Newcastle (n = 376) 95% CI	P	Patron (n = 247) 95% CI	Non-patron (n = 446) 95% CI	P
Increasing visible licensing inspections in premises	96.1	95.6 [93.3–97.9]	96.5 [94.7–98.4]	NS	95.6 [93.0–98.1]	96.4 [94.7–98.1]	NS
Increasing penalties for premises and staff who neglect to serve alcohol responsibly	87.2	88.5 [82.9–92.3]	86.2 [80.4–90.4]	NS	87.2 [80–92.1]	87.2 [82.4–90.8]	NS
Increase server liability (for actions after patrons have vacated the premises)	28.1	30.8 [24.4–38.1]	25.8 [20.2–32.4]	NS	23 [16.5–31.3]	30.8 [25.3–36.9]	NS
Closing all late-night licensed premises earlier	71.1	71.5 [64.7–77.6]	70.7 [64.3–76.7]	NS	55.1 [46.6–63.7]	79.8 [74.5–84.2]	<0.001
If supported, appropriate closing time:							
Before 12 am	21	11.7 [8.1–16.8]	28.5 [22.9–35.7]	<0.001	8.5 [5.3–14.4]	27.7 [22.3–34.1]	<0.001
12.01 am to 1 am	20.7	14 [9.9–19.6]	26.1 [20.3–33.2]	<0.001	15.3 [10.1–22.8]	23.6 [18.7–29.5]	NS
1.01 am to 2 am	25.1	29.3 [22.9–36.7]	21.8 [16.7–28.1]	NS	24.6 [17.8–33.3]	25.4 [20.4–31.3]	NS
2.01 am to 3 am	23	31.9 [25–39.5]	15.9 [11.5–21.5]	<0.001	32.6 [24.5–41.9]	17.9 [13.7–23]	<0.001
After 3 am	8.1	11.8 [7.6–17.5]	5.1 [2.8–8.7]	<0.001	16.7 [10.7–24.8]	3.4 [1.9–6.1]	<0.001
Mandatory lockouts for all late-night licensed premises	76.7	74.4 [67.4–80.4]	78.7 [72.5–83.9]	NS	67.9 [58.9–75.9]	81.6 [76.4–85.8]	0.002
Stricter restrictions on alcohol discounts and promotions	71.9	72.1 [65.1–78.3]	71.8 [65.1–77.8]	NS	65 [56–73.2]	75.7 [70.1–80.6]	NS
Restrict number of new alcohol outlets where a high outlet density already exists	52.2	53.2 [46–60.4]	51.3 [44.5–58.3]	NS	37.9 [30–46.7]	60 [53.8–66]	<0.001

## Emergency department attendances

The data presented below are for people presenting to emergency departments (EDs) in Geelong and Newcastle for injury-related conditions. Between 1 July 1999 and 31 March 2011, 116,822 injury cases presented at the Geelong Hospital ED. For Newcastle, a total of 245,761 injury cases presented at either the John Hunter Hospital ED or the Mater Calvary Hospital ED between 1 January 2001 and 30 June 2011. Peak times for alcohol-related ED attendances were 11 pm Saturday night to 5 am Sunday morning (19), hereafter referred to as high alcohol hours (HAH). Figure 21.1 shows injury trends over time in both sites during HAH.

**Figure 21.1: Emergency department attendances, Geelong and Newcastle, during high alcohol hours (HAH) for S&T codes\* per 10,000 over time (quarterly (Q))**



\* S&T codes are the alphanumeric codes that cover all injury presentations under the International Classification of Diseases (ICD) system.

Figure 21.1 suggests that changes in ED attendances were related to the imposition in Newcastle of the additional licensing conditions (Table 21.2), and changes in Geelong's policing strategy associated with the Nightlife 2 operation. ARIMA (auto-regressive integrated moving average) time series analyses found both of these changes were statistically significant. There were no obvious reductions in Geelong associated with the implementation of ID scanners, the radio network or the Just Think campaign. However, the use of fines by Victoria Police to move patrons quickly out of the entertainment area (Nightlife 2) and the later introduction of a risk-based licensing fee structure across the state were both associated with significant decreases in ED attendances during HAH.

## Police incident data

The data presented below are for assaults reported to police. Assault data for the Geelong Local Government Area (LGA) are presented for the period 1 July 2004 to 30 June 2010 and for the Newcastle CBD from 2001 to 2009. Assault incidents occurring in the Geelong LGA during HAH most

often took place in the street (39.7%), followed by private residential dwellings (24.4%) and licensed premises (12.1%) (20). In the Newcastle CBD, most non-domestic assaults occurred in a public place (42.1%), followed by licensed premises (37.5%).

**Figure 21.2: Assaults trend over time by quarter (Q): Geelong LGA, all hours and HAH, and HAH (in postcode 3220)**

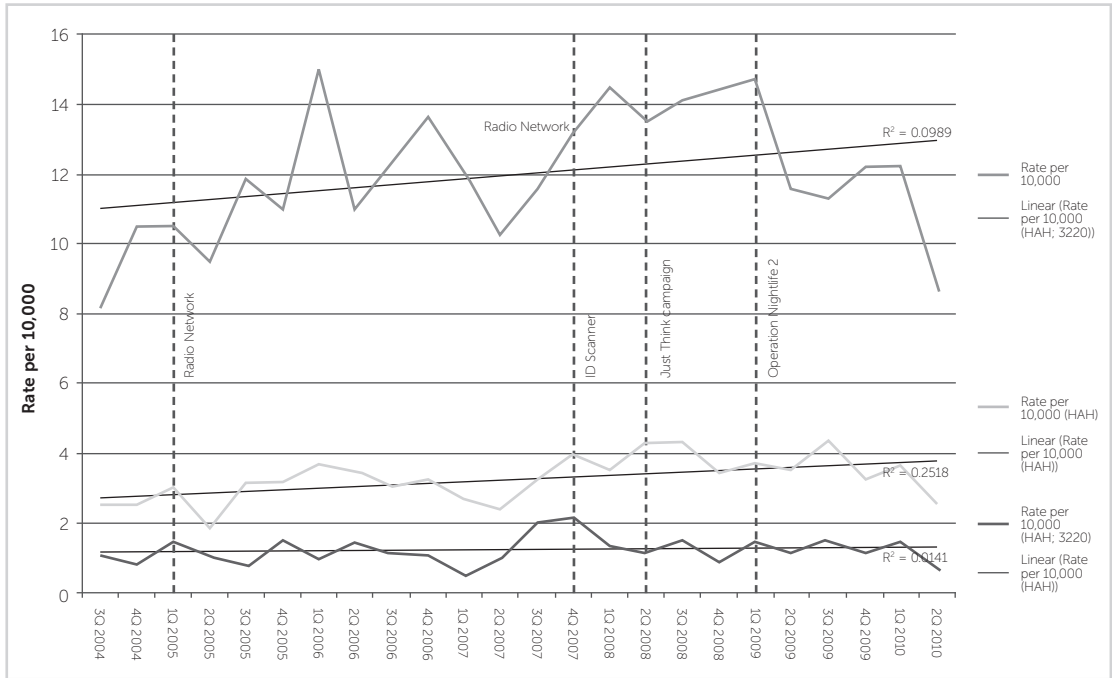
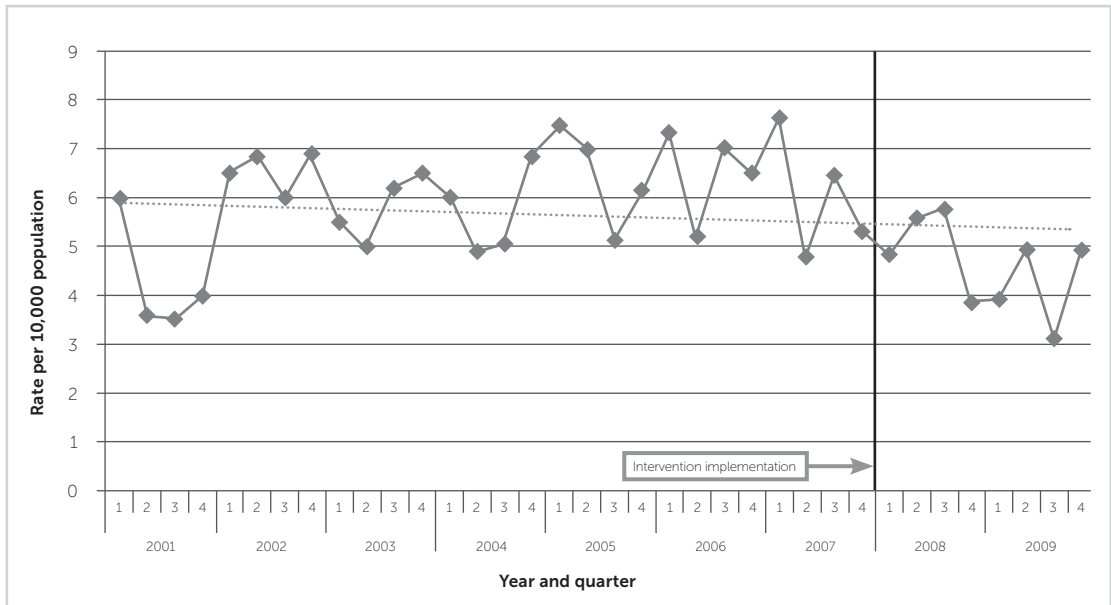


Figure 21.2 shows assault trends over time for all assaults occurring within the Geelong LGA and assaults occurring during HAH across the LGA and also in the 3220 postcode (central Geelong). All assaults increased consistently over time, although there appears to have been a reduction in each category in the last quarter of the study period. Time series analysis demonstrated that the interventions implemented in Geelong had no significant impact on assault rates. Figure 21.3 reports assault trends over time for Newcastle and Hamilton. Time series analysis found a significant reduction ( $p < 0.01$ ) of non-domestic assaults between pre- and post-intervention. This represented an average reduction of nine assaults per month.

**Figure 21.3: Non-domestic assaults for HAH per 10,000 population in Newcastle/Hamilton (1 January 2001 to 31 December 2009)**



In summary, the rate of non-domestic assaults during HAH in Newcastle dropped significantly during the study period, whereas the community-based interventions had no significant effect in Geelong. This is in line with previous research (12, 15).

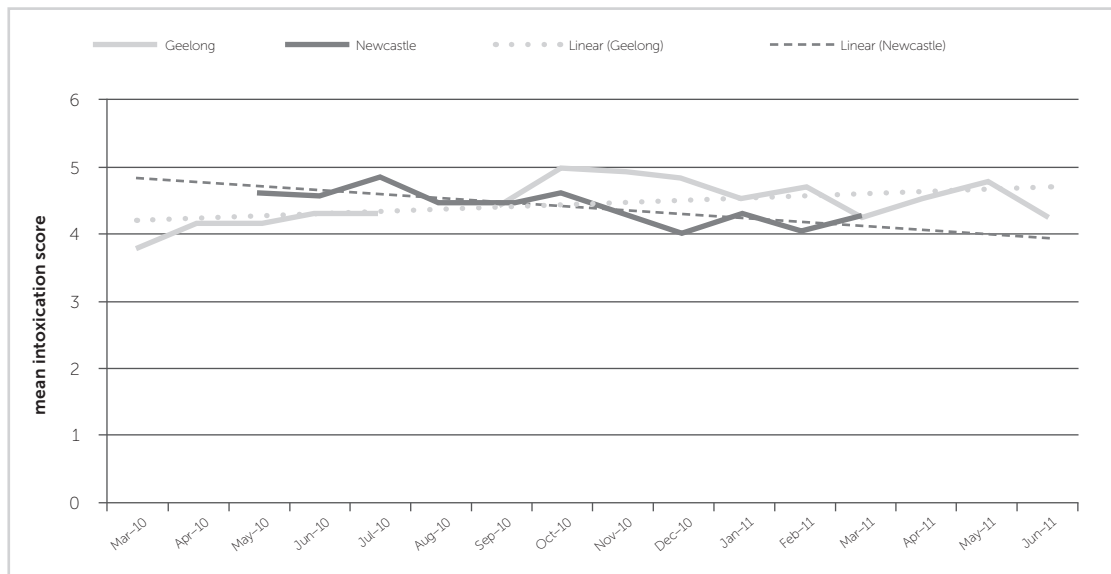
### Patron interviews

Almost 4000 people agreed to be interviewed in and around venues in Geelong and Newcastle. Table 21.5 shows major findings. These suggest that Newcastle people go out more often than those in Geelong and that intoxication levels remain high while other drug use is low. Although drug use was not very common, those who reported using drugs were significantly more likely to report being in a fight. Although this data is not in Table 21.5, more than one in ten (12.6%) people who reported other drug use had been in a fight, whereas only 5.6 per cent of those who did not report drug use had been in a fight. Figure 21.4 shows that over the study period the mean level of self-rated intoxication on a scale of 1–10 in Geelong increased ( $R^2 = 0.24$ ), whereas the mean level of self-rated intoxication in Newcastle decreased ( $R^2 = -0.65$ ). However, as shown in Table 21.5, interviewees in Geelong were significantly more likely to have witnessed a fight in the past 12 months than those in Newcastle ( $\chi^2 = 6.852$ ,  $p = 0.009$ ), although the difference was not great. In contrast, interviewees in both cities were equally likely to have experienced violence in the past 12 months ( $\chi^2 = 0.10$ ,  $p = 0.920$ ).

**Table 21.5: Summary table—patron interviews**

Item	Geelong %	Newcastle %	Total %
Gender (female)	47.6	43.6	45.5
Frequency 'going out'			
More than weekly	5.9	12.6	9.5
Weekly	33.7	31.9	32.8
Monthly	23.1	18.3	20.6
Frequency intoxicated			
Weekly	26.1	30.3	27.2
Monthly	32.7	28.2	31.4
Standard drinks consumed pre 'going out'			
0	27.9	37.1	32.8
1–5	38.7	37.8	38.2
6–10	24.2	19.1	21.5
11+	9.1	5.9	7.4
Why do you pre-drink?			
Price	34.8	35.3	35.1
Chance to catch up with friends	17.2	9.8	13.2
Convenience	4.5	7.5	6.2
Other drug use (any)	8.5	5.7	7.0
Methamphetamine	2.7	1.2	1.9
Cannabis	2.3	1.9	2.1
Speed	1.4	1.3	1.3
Ecstasy	0.5	0.4	0.5
Refuse to tell (indicated drug use)	1.1	1.2	1.1
Witnessed fight	62.7	58.6	60.6
Involved in fight	15.7	15.3	15.5

**Figure 21.4: Self-rated intoxication (mean) over time**



Pre-drinking (or pre-gaming, pre-loading, front-loading—planned heavy drinking before going to a social event) was common, as was side-loading (use of hip flasks containing spirits, which can be drunk straight or added to mixers). In line with previous research (4, 21), we also found that people who pre-loaded were more intoxicated than those who did not, and they were significantly more likely to have been involved in a violent event in the NTE in the past 12 months. The most common reason for such pre-drinking was the high price of alcohol in venues (35%). Table 21.5 also reports that although social and convenience factors played a role in people drinking before going out to licensed venues, it is clear that the price differential between packaged liquor and alcohol purchased in venues was the most common reason for pre-loading.

The patrons who pre-drank before attending licensed venues were significantly more likely to report having been involved in a physical fight on a prior occasion. The likelihood of reported prior involvement in a physical fight increased in a linear relationship with number of pre-drinks consumed (Table 21.6). Patrons who had consumed 6–10 standard pre-drinks were 1.79 times more likely to be involved in a prior violent incident (OR 1.37–2.31 95% CI,  $p < 0.001$ ), increasing to 2.93 times as likely for patrons who had more than 25 drinks (OR 1.26–15.16 95% CI,  $p < 0.05$ ).

**Table 21.6: Influence of pre-drinking on violence outcomes: Significance, Odds Ratios and  $\beta$ -weights**

Variable	Pre-drink amount						
	None <sup>^</sup>	1–5	6–10	11–15	16–20	21–25	>25
Binary Log. Reg.: Odds Ratios							
Involved in fight? (n = 3399)	–	1.16	1.79**	2.01**	2.62**	2.18	2.93
Yes		(0.90– 1.45)	(1.37– 2.31)	(1.30– 3.10)	(1.41– 4.87)	(0.87– 5.37)	(0.82– 10.46)

\* $p < 0.05$ ; \*\* $p < 0.001$ ; <sup>^</sup>Indicates reference category; confidence intervals are indicated in parentheses.

Unsurprisingly, more stringent measures implemented in Newcastle have had greater effects on levels of intoxication in the city. In contrast, Geelong’s interventions have mostly focused on harm-reduction through managing problem patrons and violent incidents, rather than intoxication. They have shown no impact on levels of intoxication.

## Venue observations

One hundred and twenty-nine venue covert observations were completed over the 14-month data collection period between April 2010 and June 2011 in 30 venues (16 in Geelong and 14 in Newcastle, every 12 weeks). Teams of two experienced research staff observed each venue for a minimum of one hour between 9 pm and 5 am on Friday and Saturday nights, and data were entered directly into a personal digital assistant or a mobile phone. Observations were primarily conducted in the main bar area, and in some instances observers were required to interact with service staff to obtain accurate responses (‘interactional’ variables such as the service of double nips). Following data collection, the data were uploaded from the digital devices and observer data were compared to determine discrepancies. If major differences existed (more than 20%) observers were contacted and a correct response was agreed. Additional quality assurance observations were conducted simultaneously on 10 per cent of observations.

The observations showed that, across both regional cities, the most prevalent strategies were not serving more than four drinks per purchase (86.7%), RTD drinks with more than 5 per cent alcohol not being served after 10 pm (85.5%), shots not being served after 10 pm (84.4%), closing before or at 3.30 am (82.9%) and no stockpiling of drinks (77.5%). The least prevalent were ID scanners (35.7%) and lockouts (44.1%). In relation to the Geelong strategy of using ID scanners, these were used at 56.4 per



cent of observations, increasing to 70.2 per cent after 1 am. Observers were asked for proof of age using an ID scanner on 48.4 per cent of observations, increasing to 52.6 per cent after 1 am.

For the Newcastle strategies, compliance with the conditions was high, with most observations reporting not serving RTD drinks with more than 5 per cent alcohol after 10 pm (97.4%), not serving shots after 10 pm (96%) and ceasing the service of alcohol at least 30 minutes before closing time (95%). Despite RSA marshals (staff members with the sole duty of identifying and managing intoxicated people) being mandatory after 11 pm, such staff were only identified on 68.5 per cent of observations.

The results indicated that late-night venues were significantly more likely to adopt practices if they were mandatory rather than voluntary. Observed compliance with drink restrictions, closing times and lockouts was high. However, few Geelong venues were voluntarily adopting such strategies. The clearest example of poor intervention fidelity was around the implementation of ID scanners. Some venues never installed the scanners, others installed low-level technology, and scanning practices were ad hoc across the city.

Therefore, while many venues had good security and RSA practices in place, the voluntary strategies in Geelong meant that implementation varied substantially, with some venues adopting RSA practices, while others did not. Some venue owners spent substantial amounts of money on appropriate security devices and staff, but other venues either did not bother or paid token notice to the strategies. In contrast, venues in Newcastle engaged in almost all the mandatory conditions, almost all of the time. These findings highlight that mandatory conditions create safer environments for patrons and an equal environment for venue operators.

## Key informant interviews

This arm of the study involved interviewing a large group of stakeholders (including licensees, security, police, council workers, industry officials and others) in the Newcastle and Geelong NTEs (n = 123), and garnering a wide range of perspectives from both sites. The aim of these interviews was not to find definitive answers to whether the interventions under investigation worked, but, rather, to gain different stakeholders' perspectives on the major issues involved. An important element was to identify the areas where people agreed and where there was disagreement, while understanding the motivations of other stakeholders.

Invariably, some people believed a measure was effective, while others thought it ineffective. Although there was often not agreement, the narratives of key informants highlighted the fact that people with different roles used very different baselines to evaluate a measure's effectiveness.

It was also clear that within different groups of people there were very different perspectives on trends and issues. Probably the best example of this revolved around restricted trading hours and the perspectives of licensees and other industry personnel. Many industry personnel strongly believed restricted trading hours were a failure, even if they had been successful in reducing crime levels, and believed there had been a reduction in trade overall. However, many other industry personnel reported that the intervention had been positive, or that they had been able to adjust by changing their business practices. Probably most interesting was the group of industry key informants who welcomed the intervention on one level, while opposing it on another. A number of licensees reported that, although their profits had reduced somewhat, they were not unhappy about the implementation of restricted trading hours and even welcomed the initiative. Importantly, some noted that they welcomed the mandated trading restrictions because they felt unable to voluntarily reconcile such trade restrictions with the desires of their customers. The key informant narratives provided highly informative and insightful comment on many of the issues under investigation and reflect the wide range of issues and perspectives involved in different aspects of the NTE. (For the data tables, see the DANTE report (18).)

## Discussion

The NTE is a risk-laden environment. Some of that risk is attractive to patrons, and many variables act to determine whether one individual suffers harm, whereas another does not. Most patrons feel safe while visiting night-time entertainment districts, although most have witnessed fights and about one in six have been in a fight in the past 12 months. However, alcohol-related harm is a complex problem that needs multifaceted and long-term approaches.

This project allowed for a contextual understanding of the problems facing communities and, importantly, the effects of the measures put in place over this time. The comparison of two models of intervening with alcohol-related harm provides a unique opportunity because both cities are of similar size and demographic profile.

Newcastle had experienced high rates of alcohol-related harm—between two and six times the rate in Geelong. Restricting trading hours had an immediate and long-term effect on alcohol-related harm in Newcastle. These interventions were effective at no extra cost to the community and freed up police resources to focus on other areas of need. Although some licensed venues within Newcastle closed during the study period, the same number ultimately closed in Geelong. While some businesses can be harmed by legislative measures, changes in implementation (for example, starting and ensuring measures are put in place at state or regional levels to reduce displacement effects or postponing implementation dates) can minimise most harm. In contrast, the voluntary interventions in Geelong had no impact. Only recent policing strategies based on fines for street offences were associated with a decline. The most likely explanation for the different results between Geelong and Newcastle is that none of the interventions in Geelong addressed alcohol consumption, whereas most of those implemented in Newcastle, especially trading hours restrictions, focused on reducing intoxication levels. Interventions that address total alcohol consumption have consistently been found to be the most effective in reducing alcohol-related violence (3, 22, 23).

Pre-drinking has been identified as a major impediment to responsible service of alcohol and is a major predictor of subsequent intoxication and an increased likelihood of experiencing violence. Intoxication from pre- and side-loading is extremely difficult for venues to police, substantially harms the business of licensed venues, and makes intoxication and violence more likely. It is one of the major barriers to effectively reducing harm in the NTE. It was also clear that current pricing regimes meant that packaged liquor outlets contributed to alcohol-related harm in society without paying anything towards harm-reduction strategies. Although this problem has been identified in other communities around the world (4, 5, 21), few have identified measures to redress this situation.

## Conclusions

Overall, the wide range of data shows that the restriction of trading hours had an immediate and long-term effect on alcohol-related harm in Newcastle. The effects of other measures (such as drinks restrictions and lockouts) put in place in Newcastle are less clear. In contrast, most of the voluntary interventions put in place in Geelong had no discernible impact in the first few years of being implemented, and only recent strategies based on fines for street offences appear to be associated with declining trends.

Based on the experience of gathering the data reported above, it is suggested that a systematic measure of alcohol-related harm—an Alcohol-Related Harm Index—should be established with readily available data. Items covered should include 'last drinks' data to identify persons involved in alcohol-related crime and high-risk venues through police arrest and emergency department data. The Alcohol-Related Harm Index would ideally be widely available and in useable form to at least postcode level, and ideally the data would be accessed through independent crime statistics bodies in all states and territories.

Based on the findings of the DANTE study, it is also recommended that communities that are identified as having unacceptable levels of alcohol-related harm should consider imposing trading hours restrictions. In addition, police forces and governments should also explore the systematic and high-profile use of fines for individual anti-social behaviour, accompanied by high-profile media and social media campaigns.

## References

1. Buss T, Abdu R, Walker JR. Alcohol, drugs, and urban violence in a small city trauma center. *Journal of Substance Abuse and Treatment* 1995;12(2):75–83.
2. Homel R, Tomsen S, Thommeny J. Public drinking and violence: not just an alcohol problem. *Journal of Drug Issues* 1992;22(3):679–97.
3. Graham K, Homel R. *Raising the bar: preventing aggression in and around bars, clubs and pubs*. Devon: Willan Publishing, 2008.
4. Hughes K, Anderson Z, Morleo M, Bellis MA. Alcohol, nightlife and violence: the relative contributions of drinking before and during nights out to negative health and criminal justice outcomes. *Addiction* 2008;103(1):60–5.
5. Wells S, Graham K, Purcell J. Policy implications of the widespread practice of ‘pre-drinking’ or ‘pre-gaming’ before going to public drinking establishments—are current prevention strategies backfiring? *Addiction* 2009;104(1):4–9.
6. Livingston M. A longitudinal analysis of alcohol outlet density and assault. *Alcoholism: Clinical and Experimental Research* 2008;32(6):1074–9.
7. Livingston M, Laslett AM, Dietze P. Individual and community correlates of young people’s high-risk drinking in Victoria, Australia. *Drug and Alcohol Dependence* 2008;98(3):241–8.
8. Gruenewald P. The spatial ecology of alcohol problems: niche theory and assortative drinking. *Addiction* 2007;102(6):870–8.
9. Gruenewald P, Remer L. Changes in outlet densities affect violence rates. *Alcoholism: Clinical and Experimental Research* 2006;30(7):1184–93.
10. Chikritzhs T, Stockwell T. The impact of later trading hours for Australian public houses (hotels) on levels of violence. *Journal of Studies on Alcohol* 2002;63(5):591–9.
11. Chikritzhs T, Stockwell T. The impact of later trading hours for hotels on levels of impaired driver road crashes and driver breath alcohol levels. *Addiction* 2006;101(9):1254–64.
12. Chikritzhs T, Stockwell T. The impact of later trading hours for hotels (public houses) on breath alcohol levels of apprehended impaired drivers. *Addiction* 2007;102(10):1609–17.
13. Chikritzhs T, Stockwell T, Hendrie D, Ying F, Fordham R, Cronin J. *The public health and safety benefits of the Northern Territory’s Living With Alcohol Program 1992/3 to 1995/6*. National Drug Research Institute monograph no. 2; National Alcohol Indicators Project bulletin no. 1. Perth: National Drug Research Institute, 1999.
14. Jones C, Kypri K, Moffatt S, Borzycki C, Price B. The impact of restricted alcohol availability on alcohol-related violence in Newcastle, NSW. *Contemporary Issues in Crime and Justice* no. 137. *Crime and Justice Bulletin* 2009(Nov.).
15. Kypri K, Jones C, McElduff P, Barker D. Effects of restricting pub closing times on night-time assaults in an Australian city. *Addiction* 2011;106(2):303–10.
16. Armstrong-Rowe L. The Geelong night watch radio program. Paper presented to Young people, crime and community safety: Australian Institute of Criminology International Conference, Melbourne, 25 February 2008.
17. Australian Bureau of Statistics. *Regional population growth, Australia 2009–2010: 3218.0 Population estimates by Local Government Area*. Canberra: ABS, 2011.

18. Miller P, Tindall J, Sonderlund A, Groombridge D, Lecathelinais C, Gillham K et al. *Dealing with Alcohol and the Night-Time Economy (DANTE): final report*. Geelong, Vic.: Deakin University and Hunter New England Population Health for the National Drug Law Enforcement Research Fund, 2012. Accessed 20 March 2014 <[www.ndlerf.gov.au/pub/Monograph\\_43.pdf](http://www.ndlerf.gov.au/pub/Monograph_43.pdf)>.
19. Miller P, Sonderlund A, Coomber K, Palmer D, Gillham K, Tindall J et al. Do community interventions targeting licensed venues reduce alcohol-related emergency department presentations? *Drug and Alcohol Review* 2011;30(5):546–53.
20. Miller P, Sonderlund A, Coomber K, Palmer D, Tindall J, Gillham K et al. The effect of community interventions targeting licensed venues on alcohol-related assaults attending an emergency department. *Open Criminology Journal* 2012;5:8–15.
21. Forsyth AJM. Front, side and back-loading: patrons' rationales for consuming alcohol purchased off-premises before, during or after attending nightclubs. *Journal of Substance Use* 2010;15(1):31–41.
22. Anderson P, Chisholm D, Fuhr D. Effectiveness and cost-effectiveness of policies and programmes to reduce the harm caused by alcohol. *Lancet* 2009;373(9682):2234–46.
23. Babor T, Caetano R, Casswell S, Edwards G, Giesbrecht N, Graham K et al. *Alcohol: no ordinary commodity: research and public policy*. 2nd edn. Oxford: Oxford University Press, 2010.

# Chapter 22

## Patron Offending and Intoxication in Night-Time Entertainment Districts (POINTED)

Peter Miller, Amy Pennay, Nicolas Droste, Rebecca Jenkinson, Brendan Quinn, Tanya Chikritzhs, Stephen Tomsen, Phillip Wadds, Sandra C Jones, Darren Palmer, Lance Barrie, Tina Lam, William Gilmore and Dan Lubman

One in four young Australians (aged between 15 and 24 years) reported consuming alcohol at levels associated with short-term harm on a weekly to monthly basis in the past year, and more than 40 per cent of young people reported having consumed more than 20 standard drinks on a single occasion during that time (1, 2). This trend is concerning, given that it has been estimated that up to 47 per cent of alcohol-related deaths can be attributed to single sessions of heavy episodic drinking (3). Previous research has explored the role that factors such as transport, environment and security have on harms associated with heavy episodic drinking (4), but little is known about how consumption practices affect harm. There is also a lack of reliable evidence on the prevalence of substance use within the night-time economy. The Dealing with Alcohol and the Night-Time Economy (DANTE) study discussed in the previous chapter identified that only a small proportion (around 7%) of patrons entering nightclubs in two regional cities reported any form of drug use (4), although it was noted that this was likely to be an underestimation. Despite the small proportion of users, however, the current research suggests nights involving drug use are proportionally more problematic. An event-based analysis in Melbourne showed that almost one in five young psychostimulant users (19%) reported engaging in an argument or fight during their most recent session of alcohol and psychostimulant use (typically with a peer from their close social network), and around one in six participants (16%) had an accident of some sort (related to intoxication) or injured themselves (5). However, this data is limited by the absence of objective data to validate the quality of self-report.

Epidemiological and social research has documented that most illicit drug users are polydrug users (6–8); however, drug research often focuses either on alcohol or illicit drugs, and only sometimes on the interaction between them. Although we know psychostimulants are the most widely used illicit drugs in the night-time economy, we know little about rates of illicit drug use and popular polydrug use combinations in this context. Further, there is little information available on which substances (and polydrug combinations) are associated with engagement in risky behaviour and experience of harm, or what forms of harm are caused by drug use.

A small but growing body of research suggests that the combination of alcohol and energy drinks is associated with a range of harms. Energy drinks enable wakefulness and alertness, which may mask the feelings of intoxication and lead to greater consumption of alcohol over a longer period of time. The potential consequences of this include alcohol poisoning, impaired judgment leading to accidents (for example, stepping in front of traffic), poor decision-making (for example, driving while intoxicated), engaging in risky behaviour (for example, risky sexual behaviour, violence) and experiencing more negative consequences (for example, a more severe hangover) (9–12).

This chapter describes findings from the Patron Offending and Intoxication in Night-Time Entertainment Districts (POINTED) study,<sup>1</sup> which followed the DANTE study and aimed to investigate:

- the levels of intoxication of people in and around licensed venues
- the types of substances being used by people in and around venues
- the relationship between time of evening, duration of drinking episode and level of intoxication and harmful or risky behaviour
- the relationship between consumption of illicit drugs (or prescription drugs being used illegally), alcohol and level of intoxication and harmful or risky behaviour
- the relationship between consumption of energy drinks, alcohol and level of intoxication and harmful or risky behaviour
- jurisdictional differences between alcohol consumption, substance use, energy drink use, levels of intoxication and harmful or risky behaviour.

POINTED was a mixed methods cross-sectional study involving two data collection components (13) that enabled us to capture data from consumers during an episode of alcohol and other drug use (14):

- short patron interviews with people entering or leaving licensed venues
- sessions of structured observation within licensed venues.

This chapter only describes the findings from the patron interview survey, as the observational findings were simply confirmatory and did not add substantial depth to the findings of the patron interviews.

This study was designed to be a systematic random sample (selecting every third person) of all people attending night-time entertainment districts (NEDs) at peak hours on weekend nights in five major Australian cities (Perth, Melbourne, Sydney, Wollongong and Geelong). Patron interviews and breath alcohol concentration (BAC) tests were conducted in busy thoroughfares in each city, as well as with patrons queuing to enter venues and leaving venues. Researchers worked in groups of six or more (15) and all interviewers wore easily identifiable clothing from their relevant institutions. Data collection occurred approximately fortnightly in each city on a Friday or Saturday night between the hours of 10 pm and 3 am, but sometimes ran as late as 5 am. Data collection occurred during warmer months in Australia (November 2011 – June 2012).

## Results

Of the 7663 individuals approached to participate in the study, 6916 agreed to be interviewed, resulting in a response rate of 90.3 per cent. The majority (59.7%,  $n = 4127$ ) were administered the 'full' interview, while 2789 (40.3%) were administered a brief version of the interview (a two-minute version of the interview that was condensed to 10 main questions). More than half (61%) of the participants were male, with a median age of 22 years (range 18–73).

Participants in Sydney were least likely to report consuming alcohol prior to interview ( $\chi^2 = 99.35$ ,  $p < 0.001$ ), with Sydney followed in order by Melbourne, Perth, Geelong and Wollongong. There was also significant variation between the interview sites with regard to the number of standard drinks participants reported consuming ( $\chi^2 = 64.91$ ,  $p < 0.001$ ). There was a significant correlation between the number of hours participants administered the full interview reported having been 'going for' and BAC reading ( $r = 0.25$ ,  $p < 0.001$ ). Figure 22.1 shows the mean BAC levels for each city throughout the

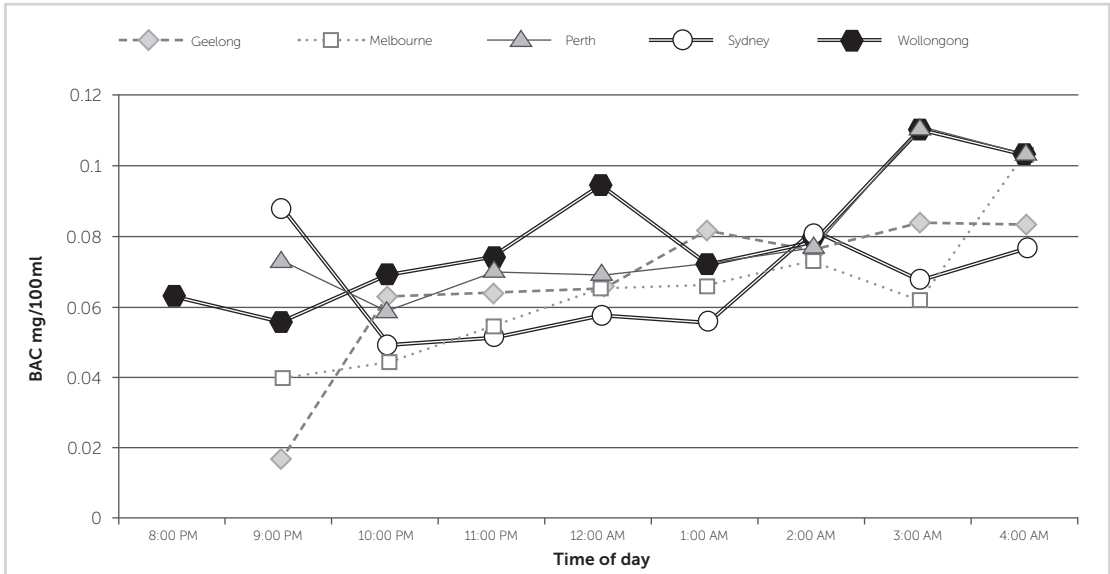
---

<sup>1</sup> This is a project supported by a grant from the Australian Government Department of Health through the National Drug Law Enforcement and Research Fund (NDLERF). Information in this chapter has previously been published in the full report: Miller P, Pennay A, Droste N, Jenkinson R, Chikritzhs T, Tomsen S et al. *Patron Offending and Intoxication in Night Time Entertainment Districts (POINTED): final report*. Geelong, Vic.: Deakin University for the National Drug Law Enforcement Research Fund, 2013.

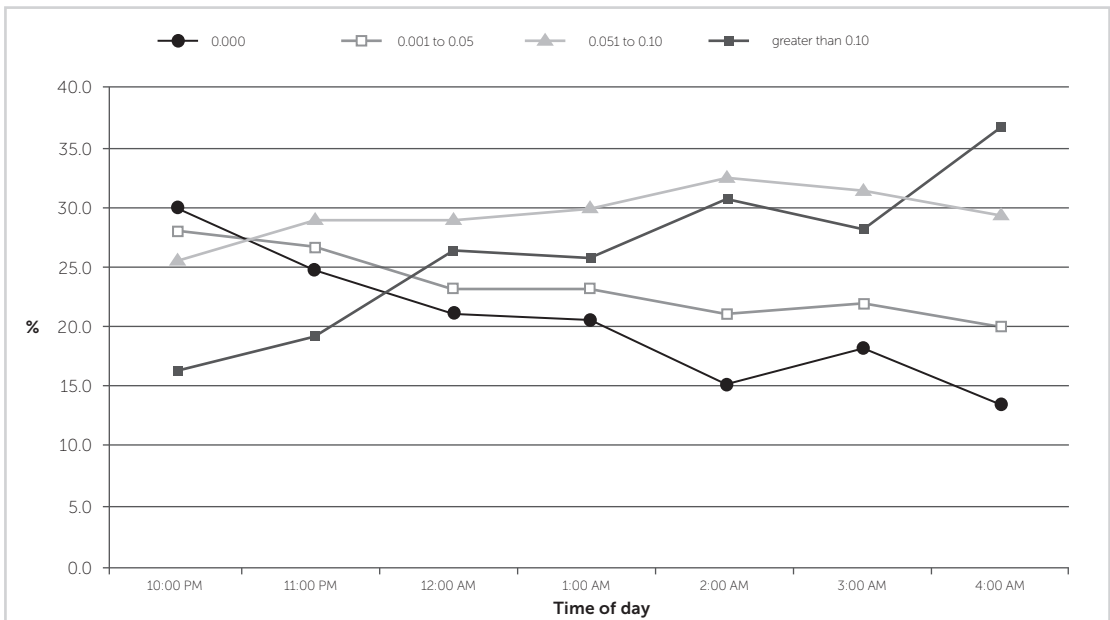
night, including participants who blew 0.00. A clear pattern of increasing BAC levels across all cities is apparent, with Melbourne and Perth showing the highest mean BAC levels at 4 am.

Figure 22.2 shows the trends for all sites by BAC level groups: 0.000 (sober to slightly intoxicated), 0.001–0.05 (moderately intoxicated) and more than 0.10 (heavily intoxicated). The data demonstrate clear trends of increasing intoxication and decreasing sobriety throughout the night. Of significance is the finding that across the five sites, the proportion of people heavily intoxicated increased from 16 per cent of people interviewed at 10 pm to 37 per cent at 4 am.

**Figure 22.1: Mean BAC level by time of day for each site**



**Figure 22.2: Proportion at different BAC levels for all sites per hour**



## Aggression and other risk behaviours

Participants were asked about their experiences of aggression and other risk behaviours in the past three months. A minority (n = 1148, 17%) of the sample reported that they had been involved in any form of verbal, physical or sexual aggression in or around licensed venues in the three months prior to interview. Table 22.1 lists the prevalence of each type of aggression among the whole sample, according to sex and city/interview location. Male participants were significantly more likely to report involvement in any type of aggression than female participants ( $\chi^2 = 19.28$ ,  $p < 0.001$ ).

**Table 22.1: Self-reported involvement in aggression in the past three months, by sex, age and city/interview site**

Variable	Aggression type			
	Any n (%)	Verbal n (%)	Physical n (%)	Sexual n (%)
Sex				
Male (n = 4112)	769 (19)	405 (10)	531 (13)	66 (2)
Female (n = 2566)	375 (14)	218 (9)	194 (8)	56 (2)
TOTAL	1144 (17)	623 (9)	725 (11)	122 (2)
City/interview site				
Geelong (n = 1255)	283 (22)	179 (14)	204 (16)	37 (3)
Melbourne (n = 1905)	272 (14)	149 (8)	146 (8)	25 (1)
Perth (n = 1214)	193 (16)	65 (5)	111 (9)	17 (1)
Sydney (n = 1536)	302 (19)	165 (11)	203 (13)	33(2)
Wollongong (n = 729)	80 (11)	56 (7.7)	52 (7.1)	9 (1)
TOTAL	1144 (17)	614 (9)	716 (11)	121 (2)
Age group				
18–19 (n = 1586)	344 (21)	172 (11)	233 (15)	32 (2)
20–24 (n = 2799)	569 (20)	325 (12)	369 (13)	61 (2)
25–29 (n = 1333)	153 (11)	83 (6)	83 (6)	19 (1)
30–39 (n = 696)	59 (8)	29 (4)	31 (4)	10 (1)
40+ (n = 230)	16 (7)	13 (6)	7 (3)	0 (0)
TOTAL (N = 6804)	1141 (13)	622 (9)	723 (11)	122 (2)

Most participants (n = 392, 88%) reported consuming alcohol during their last aggressive episode. The median number of standard drinks consumed on this occasion was nine (range: 1–45). Only 55 people (9%) reported that illicit drugs had been consumed the last time they had been involved in aggressive behaviour. The most common illicit substances reportedly consumed by these participants were ecstasy (n = 18, 33%) and methamphetamine (n = 16, 29%).

Of the entire sample, 14 per cent reported experiencing any alcohol-related accidents or injuries in the past three months; female participants were significantly more likely to report this than male participants ( $\chi^2 = 5.51$ ,  $p = 0.019$ ). Four per cent of the sample reported causing property damage while alcohol-intoxicated in the past three months (with male participants significantly more likely to do so;  $\chi^2 = 16.47$ ,  $p < 0.001$ ). Fourteen per cent of the sample reported having driven under the influence of alcohol in the three months prior to interview (with male participants more likely to do so;  $p < 0.001$ ). Eighteen per cent of participants reported having been refused service/entry or been ejected from a licensed venue due to intoxication in the past three months (with male participants significantly more likely to have been;  $\chi^2 = 93.23$ ,  $p < 0.001$ ).



Table 22.2 shows that people who reported illicit drug use were significantly more likely to report having engaged in aggressive and offending behaviour, as well as having experienced more harm in terms of injury or accidents in the past three months.

**Table 22.2: Use of illicit drugs and reported aggressive and offending behaviour in past three months**

	Illicit drug use				Chi-square	p
	Yes		No			
	n	%	n	%		
Total	524		3303			
Aggression	244	22.8	891	15.7	37.6	<0.001
Property crime	37	7.1	122	3.7	13.39	0.004
Drink-driving	413	24.1	132	12.3	62.396	<0.001
Any alcohol-related injury	197	18.7	703	13.1	23.55	<0.001

## Pre-drinking behaviours

Around two-thirds of the sample (65%) reported consuming alcohol before attending licensed venues/‘going out’ (Table 22.3). Younger participants were significantly more likely to report pre-drinking ( $\chi^2 = 17.88$ ,  $p < 0.001$ ), as were participants in Geelong and Perth ( $\chi^2 = 452.01$ ,  $p < 0.001$ ).

**Table 22.3: Pre-drinking behaviours by sex, age and city/interview location\***

Variable	Pre-drank n (%)	Median no. drinks (range) <sup>^</sup>
<b>Sex<sup>†</sup></b>		
Male (n = 4151)	2762 (67)	6 (0.5–100)
Female (n = 2605)	1617 (62)	4 (1–50)
<b>Age<sup>†</sup></b>		
18–19 (n = 1606)	1241 (77)	6 (0.5–100)
20–24 (n = 2833)	1906 (67)	6 (0.5–50)
25–29 (n = 1503)	770 (57)	5 (0.5–60)
30–39 (n = 548)	363 (52)	5 (1–37)
40+ (n = 230)	101 (44)	3 (1–20)
<b>City/interview location<sup>†</sup></b>		
Geelong (n = 1260)	1019 (81)	6 (1–100)
Melbourne (n = 1927)	1085 (56)	4 (0.5–25)
Perth (n = 1242)	993 (80)	6 (0.5–40)
Sydney (n = 1558)	805 (52)	5 (1–32)
Wollongong (n = 730)	440 (60)	4 (0.5–24)
<b>TOTAL (N = 6798)</b>	<b>4396 (65)</b>	<b>5 (0.5–100)</b>

\* For entire sample

<sup>^</sup> Among participants who reported pre-drinking

<sup>†</sup> Missing gender data for 42 participants; missing age data for 78 participants; missing location data for 81 participants; missing pre-drinking data for 6 participants

Participants reported pre-drinking in private homes (82%), at private functions (5%), in cars (4%) and at work (1%). Overall, participants who reported pre-drinking were more likely to engage in heavier alcohol consumption patterns and risk behaviours (Table 22.4). A similar proportion of males and females reported pre-drinking before going out, but men reported consuming a median of two standard drinks more than females. Unsurprisingly, levels of pre-drinking decreased as people got older, although it remains to be seen whether this related to increasing levels of income or to the level of intoxication people are looking for. Geelong and Perth residents reported the highest levels of pre-drinking, whereas Melbourne and Wollongong residents reported the lowest levels. It is likely that the Melbourne data is somewhat influenced by Friday night data where there is a strong culture of people going out after work. On the other hand, and perhaps more interestingly, Wollongong's data come primarily from Saturday nights and reflect the reality that all the major venues shut at 1 am.

**Table 22.4: Pre-drinking behaviours of drinkers by current night consumption patterns and past three months risk behaviours**

Variable	Pre-drank?	
	Yes (n = 4396)	No (n = 2444)
BAC reading, median (range)	0.068 (0.00–0.35)	0.021 (0.00–0.34)
Mean standard drinks consumed*	n = 2260 8 (1–60)	n = 1365 5 (0.5–35)
	n (%)	n (%)
Consumed energy drinks	1141 (26)	393 (16)
No. energy drinks consumed†	2 (0.25–20)	1 (0.5–15)
Mix energy drinks with alcohol†	840 (73)	155 (39)
	%	%
Consumed illicit drugs	19	11
Involved in any aggression past three months	18	14
Incurred any alcohol-related accidents/injuries past three months	16	11
Committed property crime past three months*	5	3
Driven under influence past three months*	16	12

\* Only asked of participants administered the full interview

† Of those who reported energy drink consumption

Overall, price was the most commonly reported motivation for pre-drinking, with almost two-thirds (61%) of self-reported pre-drinkers identifying price considerations as the most important motivator. Social motivators, such as 'for fun' and 'chance to catch up with friends', accounted for another 22.4 per cent of stated reasons for pre-drinking.

## Energy drink consumption

Energy drink consumption was reported by nearly one-quarter (23%) of all participants (Table 22.5), and 14.6 per cent of participants reported combining energy drinks with alcohol. Younger participants generally consumed more energy drinks and were more likely to have mixed energy drinks with alcohol ( $\chi^2 = 11.82, p = 0.019$ ).

**Table 22.5: Energy drink consumption by sex, age and city/interview location\***

Variable	Consumed energy drinks tonight n (%)	Median no. drinks (range)*	Mixed with alcohol n (%)^
<b>Sex†</b>			
Male (n = 4156)	965 (23)	1.5 (0.25–17)	603 (62)
Female (n = 2605)	561 (22)	1 (0.5–20)	387 (69)
<b>City/interview location†</b>			
Geelong (n = 1262)	359 (28)	2 (0.5–15)	245 (68)
Melbourne (n = 1926)	349 (18)	1 (0.5–17)	201 (58)
Perth (n = 1244)	305 (25)	1 (0.25–10)	201 (66)
Sydney (n = 1560)	374 (24)	1.5 (0.5–20)	232 (62)
Wollongong (n = 730)	126 (17)	1 (0.5–9)	102 (81)
<b>TOTAL (N = 6803)</b>	<b>1536 (23)</b>	<b>1 (0.25–20)</b>	<b>996 (65)</b>

\* For entire sample

^ Of those who reported consuming energy drinks

† Missing gender data for 42 participants; missing age data for 78 participants; missing location data for 81 participants; missing energy drink data for 1 participant

Participants who mixed energy drinks with alcohol self-reported consuming significantly more alcohol than those who consumed alcohol alone ( $z = -9.2897$ ,  $p < 0.001$ ), were significantly more likely to report pre-drinking ( $\chi^2 = 81.908$ ,  $p < 0.001$ ) and were significantly more likely to report illicit drug use ( $\chi^2 = 41.528$ ,  $p < 0.001$ ) compared with those who had not consumed energy drinks with alcohol. Table 22.6 presents BAC readings according to energy drink consumption behaviours.

**Table 22.6: BAC readings, by energy drink consumption behaviours**

Variable	BAC
<b>Consumed energy drinks</b>	
Yes (n = 1483)	0.063 (0.00–0.35)
No (n = 5073)	0.051 (0.00–0.34)
<b>Mix energy drinks with alcohol</b>	
Yes (n = 971)	0.072 (0.00–0.35)
No (n = 512)	0.040 (0.00–0.29)
<b>TOTAL (N = 6557)*</b>	<b>0.054 (0.00–0.35)</b>

\* valid cases for this variable

Figure 22.3 reports the mean number of energy drinks consumed by interviewees overall and across each site, and shows remarkable consistency, with a peak in consumption around 2–3 am of about three standard energy drinks.

**Figure 22.3: Mean energy drinks consumed for each city by hour of day, among those consuming energy drinks**

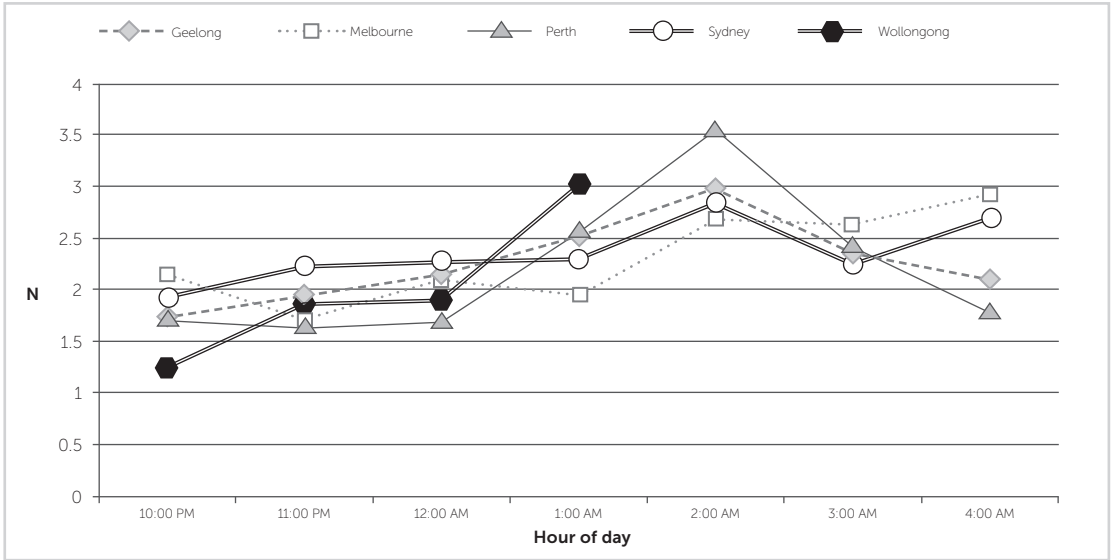
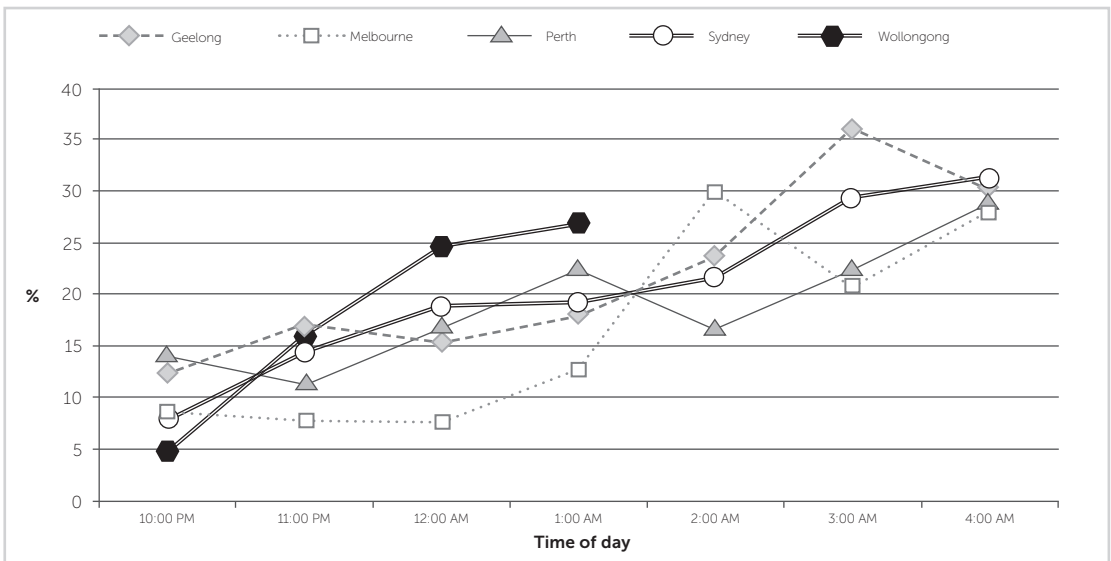


Figure 22.4 reports the percentage of interviewees who reported having consumed alcohol mixed with energy drinks for each city across the night. The trends are remarkably similar for all the cities and there appears to be steeper increases later in the night, suggesting that people who are out later at night might use more energy drinks. It is also possible that people who have not consumed energy drinks have headed home by 1 am. As discussed later, the trend may also reflect the profile of energy drink users engaging in more risk behaviours generally, potentially reflecting trait issues rather than issues to do with the events of the night they were interviewed. Surprisingly, despite a ban on serving energy drinks with alcohol after midnight in Perth, consumption patterns in Perth were similar to other cities.

**Figure 22.4: Percentage of interviewees consuming alcohol mixed with energy drinks for each city by hour of day**



Motivations for combining energy drinks and alcohol included liking the taste of the combined drinks (32%) and providing energy to stay awake/party longer (24%). People who reported consuming energy drinks were also more likely to report having experienced any form of aggression and injury in the past three months than those who had not ( $\chi^2 = 41.10$ ,  $p = 0.000$ ; Table 22.7).

**Table 22.7: Energy drink use and experience of harm in past three months**

	Consumed any energy drinks tonight?		Chi-square	p
	Yes	No		
Total	1536	5267		
Any aggression around licensed venues past three months?	22.3%	15.3%	41.01	<0.001
physical aggression	14.7%	9.5%	33.42	<0.001
verbal aggression	12.3%	8.3%	23.11	<0.001
sexual aggression	2.3%	1.7%	3.21	0.073
Any accident/injury past three months	18.3%	11.9%	39.498	<0.001
Drink-driving	16.7%	13.4%	5.51	0.019
Committed property crime	34.6.0%	18.6%	25.21	<0.001

## Other substance use

Around one in six ( $n = 1072$ , 16%) of the overall sample reported use of substances other than alcohol or energy drinks during their current night out prior to interview (Table 22.8).

**Table 22.8: Self-reported use of substances other than alcohol during current night out (prior to interview), by city/interview location\***

Drug	TOTAL N = 6804 n (%)	Geelong N = 1262 n (%)	Melbourne N = 1927 n (%)	Perth N = 1244 n (%)	Sydney N = 1560 n (%)	Wollongong N = 730 n (%)
Ecstasy	231 (3)	58 (5)	36 (2)	13 (1)	101 (6)	18 (2)
Cocaine	97 (1)	13 (1)	33 (2)	15 (1)	24 (2)	10 (1)
Methamphetamine <sup>o</sup>	179 (3)	52 (4)	64 (3)	16 (1)	39 (3)	7 (1)
Pharmaceutical stimulants <sup>†</sup>	30 (<1)	7 (1)	3 (<1)	12 (1)	6 (<1)	2 (<1)
Ketamine	5 (<1)	3 (<1)	0 (0)	0 (0)	2 (<1)	0 (0)
Benzodiazepines	8 (<1)	3 (<1)	4 (<1)	0 (0)	1 (<1)	0 (0)
GHB <sup>‡</sup>	8 (<1)	2 (<1)	1 (<1)	1 (<1)	3 (<1)	1 (<1)
LSD <sup>§</sup>	15 (<1)	1 (<1)	6 (<1)	3 (<1)	5 (<1)	0 (0)
Cannabis	196 (3)	37 (3)	68 (4)	29 (3)	48 (3)	14 (2)
Opiates <sup>≈</sup>	10 (<1)	5 (<1)	3 (<1)	1 (<1)	1 (<1)	0 (0)
Mephedrone	6 (<1)	3 (<1)	0 (0)	3 (<1)	0 (0)	0 (0)
Other <sup>#</sup>	32 (1)	5 (<1)	10 (1)	4 (<1)	0 (0)	4 (1)
ANY	1072 (16)	318 (25)	272 (14)	166 (13)	214 (14)	89 (12)

\* For entire sample

<sup>o</sup> Refers primarily to speed powder, crystal methamphetamine/‘ice’, amphetamine liquid, and methamphetamine base

<sup>†</sup> Includes dexamphetamine and Ritalin

<sup>‡</sup> gamma-hydroxybutyrate acid

<sup>§</sup> lysergic acid diethylamide

<sup>≈</sup> Includes heroin, morphine, endone, codeine

<sup>#</sup> Includes nitrous oxide (‘gas’), ‘magic mushrooms’ and other pharmaceuticals (e.g. over-the-counter painkillers)

In addition to self-report, 503 participants in Melbourne and Geelong were invited to be tested for the use of meth/amphetamine, cocaine, opiates, cannabis and benzodiazepines via drug swab. The majority of these participants (n = 401, 80%) agreed to the test and 20 per cent of those who provided a drug swab returned a positive test.

## Discussion

This project, especially when combined with the DANTE study (see previous chapter), provides unprecedented surveillance of the nightlife of five Australian cities and allows substantial insight into the behaviour patterns of NED patrons. Overall, alcohol remains the driver of most harm in the night-time economy (NTE), and most people who regularly engage in urban nightlife experience harm of some form eventually. There were striking similarities across the five sites on the variables of interest, whereby levels of intoxication, energy drink use and mixed alcohol/energy drink use increased in a linear fashion throughout the night. These findings reinforce the large body of research that shows a relationship between later trading and greater levels of intoxication and harm (4, 16, 17).

Intoxication resulting from pre-drinking was a consistently strong predictor of trouble for individuals in our sample. Those who pre-drink may seldom come into contact with bar staff and their levels of intoxication can be difficult to monitor through regular staff interactions. Calls for improved intoxication screening practices are valid, but while the refusal of entry to highly intoxicated patrons may remove harm from specific venues, it will do little to reduce the prevalence of overall violence in NTEs, given that the majority of alcohol-related assaults occur outside venues. The majority of pre-drinkers are motivated by price discrepancies between packaged and on-premises alcohol, therefore pre-drinking behaviour represents a unique policy challenge for those seeking to reduce alcohol-related harm.

The use of energy drinks and combined alcohol and energy drinks in the NTE was also found to be associated with an increased risk of harm. Consistent with limited international research, around 15 per cent of night-time revellers consumed alcohol and energy drinks, and they were more likely to be younger patrons. Alcohol and energy drink consumers were more likely to have a higher BAC reading, were more likely to pre-drink and use illicit drugs, and were more likely to have engaged in risky behaviour in the past three months, including being involved in a fight or drink-driving. Importantly, rates of energy drink and alcohol and energy drink use increased throughout the night to mean levels beyond the recommended dosage for healthy consumption, suggesting the need for substantial action—including research into the effects of such high levels of use, the effectiveness of labelling to warn against such use, the relevance of educational campaigns and the need for legislative action.

Illicit drug use was common in the cities studied and had a significant effect on intoxication, offending, and risk and harm in the NTE. Although a minority of participants reported that illicit drugs had been consumed the last time they had been involved in aggressive behaviour, associations were found between self-reported use of illicit drugs on the night of interview and reported aggressive and offending behaviour in the three months prior to interview. People who reported illicit drug use on the night of interview were significantly more likely to report having engaged in physical, verbal and sexual aggression, as well as property crime and drink-driving. Self-reported illicit drug use was also associated with experiencing an injury related to intoxication during that time. Overall, the study's findings suggest that illicit drug use is a significant contributing factor to the harms observed in the NTE, but that a minority of patrons use illicit drugs. These findings suggest that the people who are engaging in illicit drug use and the other identified problem behaviours might be more deviant, reflecting trait characteristics rather than state influences. Despite this, it is clear that there is a need for a program of research interventions and policy responses to address the issue. Previous research has shown a combination of supply, demand and harm reduction approaches is most likely to be effective.

## Conclusions

As the largest study conducted in the NTE to date, this study has shown that alcohol remains a significant contributor to patron offending and intoxication in the NTE. Pre-drinking, energy drink use and illicit drug use all contributed significantly to the harm and offending behaviour observed, but basic levels of intoxication and pre-drinking are by far the most common behaviours reported by offenders and people who experience harm.

Levels of intoxication increased throughout the night across the five sites, resulting in a substantial proportion of the people in the NTE being heavily intoxicated, especially after 1 am (30% above 0.1 BAC). The findings suggest that current regulatory and enforcement frameworks require further refinement and investment. In particular, responsible service of alcohol measures are evidently insufficient and require more stringent regulation and more comprehensive and systematic enforcement regimes (4). Police and other regulatory bodies need stronger legislative frameworks to allow them to act on venues that fail to implement responsible service of alcohol. A further need exists for systematic, publicly available data about specific venues that are failing to meet their licence conditions (18).

Further, Australian jurisdictions should consider imposing trading hour restrictions, applied consistently across regions, to ensure businesses can compete equally. The study showed that levels of intoxication increased throughout the night across all sites, resulting in a substantial proportion of the people in the NTE being heavily intoxicated, especially after 1 am (excluding Wollongong). Ultimately, the most evidence-based approach to reducing intoxication levels is through closing venues earlier (4, 19). In addition, an intervention trial prohibiting the sale of alcohol for 60 minutes before closing time is recommended in venues that trade after 2 am to reduce crowding issues on public transport and to allow people to leave in a more relaxed fashion. It is also important to institute a program of research into the best models for regulating and monitoring licensing regulations; consideration should be directed at an integrated strategy with a clearly defined enforcement pyramid, wherein venues that have more problems or infringements for poor service of alcohol will be subject to increasing levels of financial disincentives (including fines and licence fees) and, ultimately, trading hours and customer volume restrictions.

This research identified pre-drinking as a significant predictor of alcohol-related harm and a major impediment to responsible service of alcohol. This behaviour reflects a culture of people seeking heavy intoxication and requires serious, substantial, evidence-based interventions across a range of variables (for example, price, availability and advertising). The most evidence-based measure to reduce alcohol consumption is to increase the price of alcohol through taxation (preferably based on volume and increasing according to beverage strength) or establishing a minimum price. This additional taxation could be retained for specific expenditure on measures that ameliorate harm (as has been the case with increases in tobacco taxation in some states). In addition to a straight levy, regulatory measures could be implemented to reduce discount alcohol sales. In particular, bans on bulk-buys, two-for-one offers and other promotions based on price deserve consideration as policy responses that could reduce heavy episodic drinking. State and local governments should also investigate levies on each unit of alcohol sold by packaged liquor outlets to recover costs associated with alcohol. This money would be allocated for police, hospitals and councils to meet the costs of alcohol-related harm.

The impact of pre-drinking documented in this study is substantially greater than reported in the previous study (4). It suggests an even greater need for effective action. Current pricing regimes mean that packaged liquor outlets contribute to alcohol-related harm in society without making a direct contribution to harm-reduction strategies. This is anti-competitive for licensed venues as businesses. It leaves local communities to address the alcohol-related harm that emanates from packaged liquor outlets; in particular, cheap liquor promotions and sales. As has been identified in other fields of regulation, it is important that the 'polluters' contribute to the cost of harms arising from their activities. Although this problem has been identified in other communities around the world, few have suggested

measures to redress this situation. Levies on packaged liquor may be used to reduce the harm it causes by providing funds for increased regulatory and law enforcement, preventative initiatives or environmental measures. Levies would also have the additional benefit of changing consumption: research has consistently shown that even small price increases can reduce alcohol consumption (20, 21).

Further research into energy drink use is also strongly recommended to validate and expand upon the current findings. Any energy drink use was found to be associated with increased experience of harm and alcohol consumption in the NTE. Energy drink use was found to exceed recommended daily intake by 11 pm across most sites. Further, despite restricting the sale of mixed alcohol and energy drinks after midnight in Perth, the levels of consumption of all variants remained similar to all other sites. Policy trials to ban energy drink sales after 10 pm are worthy of consideration, as are restrictions on discounts and promotions of alcohol and energy drinks. Although unlikely to have a major impact in its own right, education is an important element of any health campaign, and can include posters displaying information about the maximum number of energy drinks that should be consumed daily and the potential risks associated with combining alcohol and energy drinks, and public education campaigns about the potential dangers of mixing alcohol and energy drinks.

Finally, half of those surveyed reported that they were going to take a taxi home, indicating that focusing efforts on late-night transport infrastructure would ensure that highly intoxicated patrons left NEDs as quickly as possible. Further tailoring of, and research into, transportation solutions for NEDs are strongly recommended. In all the cities where data collection was conducted, major public transport infrastructure is closed during the hours when intoxication/risk of harm is at its peak. Increasing the availability and security supervision of large-scale public transport in NEDs would help remove intoxicated patrons from unsupervised streets where most assaults occurred, and would ease the strain on taxi services and ranks. The best option based on the available research is to align venue trading hours with public transport availability and allow patrons up to 30 minutes after venues close to use public transport. Such services would be well served by employing additional security personnel.

The POINTED study and its predecessor (DANTE) have shown that the harms arising from the NTE are substantial, but not unavoidable. Measures to reduce harm are plentiful, and some have a strong evidence base (for example, restricting trading hours (19)) but require public pressure and political will. Mixing alcohol and human beings can sometimes destroy lives and it is the responsibility of government to ensure public safety and amenity are balanced with the profits of business and the hedonistic desires of young people looking for a good time. Although young adults are empowered and independent, they are the products of our cultural values and, once intoxicated, many become unable to make optimal decisions. Providing NEDs where such behaviours do not destroy young lives is a national priority that no level of government can afford to ignore.

## References

1. Chikritzhs T, Pascal R. *Trends in youth alcohol consumption and related harms in Australian jurisdictions, 1990–2002*. National Alcohol Indicators Bulletin no. 6. Perth: Curtin University, National Drug Research Institute, 2004.
2. Victorian Drug and Alcohol Prevention Council. 2009 *Victorian Youth Alcohol and Drug Survey: final report*. Melbourne: Victorian Drug and Alcohol Prevention Council for the Department of Health, 2010.
3. Stockwell T, Masters L, Phillips M, Daly A, Gahegan M, Midford R et al. Consumption of different alcoholic beverages as predictors of local rates of night-time assault and acute alcohol-related morbidity. *Australian and New Zealand Journal of Public Health* 1998;22(2):237–42.
4. Miller P, Tindall J, Sonderlund A, Groombridge D, Lecathelinais C, Gillham K et al. *Dealing with Alcohol and the Night-Time Economy (DANTE): final report*. Geelong, Vic.: Deakin University and Hunter New England Population Health for the National Drug Law Enforcement Research Fund, 2012. Accessed 20 March 2014 <[www.ndlerf.gov.au/pub/Monograph\\_43.pdf](http://www.ndlerf.gov.au/pub/Monograph_43.pdf)>.



5. Jenkinson R, Dietze P, Jolley D. 'Weekend on the town': examining a session of psychostimulant use among a sample of young socialites. *Drug and Alcohol Review* 2009;28(1):32–50.
6. Jenkinson R, Fry C, Miller P. *Victorian drug trends 2002: findings from the Illicit Drug Reporting System (IDRS)*. NDARC Technical Report no. 145. Sydney: National Drug and Alcohol Research Centre, 2003.
7. Jenkinson R, Miller P, Fry C. *Victorian drug trends 2003: findings from the Illicit Drug Reporting System (IDRS)*. NDARC Technical Report no. 175. Sydney: National Drug and Alcohol Research Centre, 2004.
8. Stafford J, Burns L. *Australian drug trends 2012: findings from the Illicit Drug Reporting System (IDRS)*. Australian Drug Trend Series no. 91. Sydney: National Drug and Alcohol Research Centre, 2013.
9. Ferreira SE, Tulio de Mello M, Pompeia S, de Souza-Formigoni ML. Effects of energy drink ingestion on alcohol intoxication. *Alcoholism: Clinical and Experimental Research* 2006;30(4):598–605.
10. Pennay A, Lubman DI, Miller P. Combining energy drinks and alcohol: a recipe for trouble? *Australian Family Physician* 2011;40(3):104–7.
11. O'Brien MC, McCoy TP, Rhodes SD, Wagoner A, Wolfson M. Caffeinated cocktails: energy drink consumption, high-risk drinking and alcohol-related consequences among college students. *Academic Emergency Medicine* 2008;15(5):453–60.
12. Jones S, Barrie L, Berry N. Why (not) alcohol energy drinks? A qualitative study with Australian university students. *Drug and Alcohol Review* 2012;31(3):281–7.
13. Miller P, Pennay A, Jenkinson R, Droste N, Chikritzhs T, Tomsen S et al. Patron Offending and Intoxication in Night Time Entertainment Districts (POINTED): a study protocol. *International Journal of Alcohol and Drug Research* 2013;2(1):69–76.
14. Miller P, Pennay A, Droste N, Jenkinson R, Chikritzhs T, Tomsen S et al. *Patron Offending and Intoxication in Night Time Entertainment Districts (POINTED): final report*. Geelong, Vic.: Deakin University for the National Drug Law Enforcement Research Fund, 2013. Accessed 22 March 2014 <[www.ndlerf.gov.au/pub/Monograph\\_46.pdf](http://www.ndlerf.gov.au/pub/Monograph_46.pdf)>.
15. Miller P, Palmer D, Droste N, Tindall J, Gillham K, Sonderlund A et al. Dealing with alcohol-related problems in the night-time economy: a study protocol for mapping trends in harm and stakeholder views surrounding local community level interventions. *BMC Research Notes* 2011;4(1):204.
16. Chikritzhs T, Stockwell T. The impact of later trading hours for Australian public houses (hotels) on levels of violence. *Journal of Studies on Alcohol* 2002;63(5):591–9.
17. Babor T, Caetano R, Casswell S, Edwards G, Giesbrecht N, Graham K et al. *Alcohol: no ordinary commodity: research and public policy*. 2nd edn. Oxford: Oxford University Press, 2010.
18. Wiggers JH. Reducing alcohol-related violence and improving community safety: the Alcohol Linking Program. *NSW Public Health Bulletin* 2007;18(5–6):3.
19. Kypri K, Jones C, McElduff P, Barker D. Effects of restricting pub closing times on night-time assaults in an Australian city. *Addiction* 2011;106(2):303–10.
20. Stockwell T, Auld MC, Zhao J, Martin G. Does minimum pricing reduce alcohol consumption? The experience of a Canadian province. *Addiction* 2012;107(5):912–20.
21. Wagenaar AC, Salois MJ, Komro KA. Effects of beverage alcohol price and tax levels on drinking: a meta-analysis of 1003 estimates from 112 studies. *Addiction* 2009;104(2):179–90.

# Chapter 23

## Effectiveness of Victorian justice strategies in preventing and reducing alcohol-related harm

John Doyle

The level of reported alcohol-related harm in Victoria has increased significantly over the past 10 years. Alcohol-related ambulance attendances in metropolitan Melbourne more than tripled between 2000–01 and 2010–11, and alcohol-related assaults in Victoria increased 49 per cent. The rate of the increase in harm has slowed in recent years, but the number of reported incidents continues to rise.

Combating alcohol-related harm is challenging and costly. The underlying causes are complex and there are numerous public and private sector stakeholders involved, many with competing interests. Although alcohol can be harmful, more than 80 per cent of adults drink. Some types of licensed premises have a stronger association with alcohol-related harm than others. This presents significant challenges for agencies in policy and strategy development. For instance, there is clear evidence to indicate that strategies that increase the price and restrict the availability of alcohol are effective in reducing harm. However, these types of measures tend to be unpopular with the public because they increase costs and create inconvenience.

In 2012 the Victorian Auditor-General conducted a performance audit on the effectiveness of justice strategies in preventing and reducing alcohol-related harm (1).<sup>1</sup> The audit assessed the effectiveness of initiatives and actions in enforcing controls on the sale and marketing of alcohol, and preventing and reducing the impact of short-term alcohol-related harm on the community. The audit covered the Department of Health (DOH) (which has a coordinating role for whole-of-government alcohol policy development), the Department of Justice (DOJ), the Victorian Commission for Gambling and Liquor Regulation (VCGLR), the Department of Planning and Community Development, and Victoria Police.

The report covered areas including strategy development, implementation and evaluation; data collection and information sharing; the liquor licensing regime; and enforcement, compliance and policing. It presented 10 recommendations for the Victorian Government's consideration.

### Strategy development, implementation and evaluation

More than 19,000 active liquor licences and bring your own (BYO) permits in Victoria are held by operators including pubs, bars, restaurants, clubs, bottle shops, wineries and event organisers. Approximately 78 per cent of the total volume of alcohol sold in Australia in 2009 was for off-premises consumption. Packaged liquor is primarily consumed in private homes.

In 2002, the Department of Human Services (DHS) launched the Victorian Alcohol Strategy: Stage One (2). The strategy was described as 'the first stage in the government's approach to alcohol misuse and harm' (1:4).

<sup>1</sup> Material in this chapter has been published in a previous report: Victorian Auditor-General. *Effectiveness of justice strategies in preventing and reducing alcohol-related harm*. Melbourne: State of Victoria, 2012.

In 2005, DOJ began work on developing and implementing a range of localised initiatives in the entertainment precincts of four inner-city councils: Melbourne, Port Phillip, Stonnington and Yarra.

In 2008, DHS released *Restoring the balance: Victoria's alcohol action plan 2008–2013* (3). The whole-of-government action plan aimed to reduce:

- risky drinking and its impact on families and young people
- the consequences of risky drinking on health, productivity and public safety
- the impact of alcohol-fuelled violence and anti-social behaviour on public safety.

Responsibility for implementing Victoria's alcohol action plan 2008–2013 (VAAP) rested primarily with DHS, DOH, DOJ and Victoria Police. The justice component of VAAP focused on enforcing controls over licensed premises and the sale and marketing of alcohol, and preventing and reducing the effects of alcohol misuse, such as alcohol-fuelled violence.

DOJ and Victoria Police had 14 actions to deliver under VAAP, which largely focused on the licensed hospitality industry and alcohol-related harm in public places. The actions were to:

- enhance enforcement of the *Liquor Control Reform Act 1998* (Vic.)
- review liquor licensing fees
- review obligations of managers and employees of licensed premises
- consider introducing underage operatives
- review compliance with the voluntary water guidelines to provide free or low-cost drinking water on licensed premises
- develop an assault reduction strategy
- introduce late-hour entry restrictions
- freeze the issuing of late-night liquor licences
- implement new security camera regulations
- review patron numbers in high-risk venues
- amend the Victorian planning provisions
- consider a new rehabilitation system for high-risk drink-driving offenders
- extend the zero blood alcohol concentration limit for young drivers
- conduct the Safe Streets public safety research and pilot evaluation.

While implementing its VAAP actions, DOJ worked concurrently on additional measures to combat alcohol-related harm. These measures included issuing guidelines on appropriate alcohol promotions and venue design to improve safety.

Following the 2010 Victorian state election, VAAP was replaced by the initiatives contained in the Plan for Liquor Licensing (4).

In 2011, consultation on a new whole-of-government alcohol and drug strategy began.

## Audit findings

The increase in reported short-term alcohol-related harm over the past 10 years indicates that strategies to mitigate alcohol-related harm have not been successful. More people require medical attention for intoxication, and the number of assaults and injuries has increased. The extent of the problems caused by alcohol is, however, understated because of shortcomings in data collection, analysis and dissemination. Multiple agencies are involved in alcohol policy, many with competing interests. There is no whole-of-government policy position on alcohol and the liquor and hospitality industry to resolve these competing interests. The consequence of these unresolved issues in 2008 was a diluted strategy with limited effectiveness.

DOJ has made efforts to minimise the harmful effects that can arise from alcohol consumption. However, the effectiveness of its efforts has been reduced by poorly chosen and implemented strategies. The DOJ component of VAAP was a fragmented series of reactive, often small-scale initiatives that were action-based, rather than outcome-based. They did not make a purposeful, direct and collective contribution towards minimising harm, and were not sufficiently underpinned by evidence.

VAAP was launched six years after it was first proposed. Despite this length of time, poor planning meant DOJ's initiatives had unforeseen and unintended consequences—stakeholder consultation was inadequate and numerous ad hoc initiatives were implemented outside the strategy.

The data available on consumption patterns and alcohol-related harm were insufficient to comprehensively and objectively inform the development of the VAAP strategy. Although there were some exceptions—such as the increased level of compliance with licence conditions and the risk-based licence fee structure—these actions did not collectively or purposefully contribute towards achieving VAAP's aims.

DOJ advised that heightened community and media concerns regarding alcohol-related harm influenced decision-making in terms of both the content and timing of initiatives. A number of actions were authorised and undertaken outside the strategic framework and without a robust assessment of how they would contribute to minimising alcohol-related harm.

The lack of a centralised database of harm data also impedes evidence-based strategy development. The relationship between alcohol and harm is obscured by incomplete and inconsistent recording of the presence of alcohol in police and medical data. These gaps and inaccuracies diminish the quality of any analysis on alcohol's contribution to harm. In this regard, Victoria has fallen behind other jurisdictions.

DOJ did not dispute the research findings that the cost and availability of alcohol influence consumption and ultimately harm. Since the law does not allow the state to use pricing as a harm minimisation strategy, it is reasonable to expect DOJ to compensate for this by providing advice on ways to significantly enhance controls over supply instead. It has not done so.

DOJ's ability to develop evidence-based strategies has been further limited by the inadequate evaluation of previous initiatives. DOJ has spent approximately \$67 million since 2007–08 on developing and implementing alcohol policy, liquor licence regulation and compliance inspections. However, it has carried out only limited evaluation of what it has achieved from this significant investment.

Four years on, the issues of competing interests and data limitations have yet to be resolved. The opportunity to learn lessons from VAAP has been missed because no holistic performance evaluation has been carried out. The lack of comprehensive, accurate and shared data and inadequate evaluation of VAAP means that there is a real risk that a subsequent alcohol and drug strategy will make the same mistakes as VAAP and be similarly limited in achieving its intended outcomes.

## Data collection and information sharing

The availability and reliability of data underpins evidence-based strategy development and evaluation. Insufficient action has been taken to address the omissions and inaccuracies in the data and to incorporate better practice.

Many of DOJ's activities directly or indirectly target reducing consumption rates, yet it does not collect alcohol sales data. This data would allow DOJ to reliably measure the impact of its activities on overall consumption rates and comprehensively analyse the relationship between consumption patterns and alcohol-related harm.

The lack of a centralised database of harm data limits:

- DOJ's capacity to develop evidence-based strategies
- the quality of decisions made on liquor licence applications
- the ability of Victoria Police and VCGLR to carry out intelligence-led enforcement.

The relationship between alcohol and harm is further obscured by incomplete and inconsistent recording of the presence of alcohol in police and medical data. Health data is slightly more robust than police data, as it is scrutinised more closely by research bodies.

Nonetheless, these gaps and inaccuracies diminish the quality of the analysis of alcohol's contribution to harm. Victoria has fallen behind other jurisdictions, where offenders and patients are asked about their alcohol consumption in a more structured and methodical manner.

Agencies have their own intelligence gathering procedures and methods, and develop enforcement strategies accordingly. Communication and information sharing between enforcement agencies, particularly in outer Melbourne and regional and rural Victoria, is largely ad hoc and on a 'need-to-know' basis. There is therefore duplication of effort without robust information sharing systems and strategies.

Multiple agencies, including Victoria Police, VCGLR and local councils, are involved in monitoring and responding to issues with licensed venues and to alcohol-related harm. Victoria Police and VCGLR separately record data on offences and infringements: VCGLR records breaches of liquor licence conditions and councils record breaches of the planning permit. Complaints from the public may be received by the police, VCGLR or councils.

This is a missed opportunity to build a whole-of-government 'early warning system' that identifies potential alcohol-related harm and problem venues before matters escalate. A central intelligence database to collate, analyse and share data from both crime and health sources would assist a coordinated effort by agencies to develop intelligence-led strategies to deal with identified problems. Protocols on the sharing of information would appropriately reflect the sensitivity of the information.

## Audit findings

Many of DOJ's activities directly or indirectly target reducing excessive alcohol consumption as a means of reducing alcohol-related harm. However, DOJ cannot reliably measure its effectiveness in reducing overall consumption because alcohol sales data is not collected in Victoria.

Although agencies individually collect data on alcohol-related harm, there is no central database to collate, analyse and disseminate all of the data available. This data includes crime statistics from Victoria Police, the Compliance Unit and councils, ambulance attendances, emergency department presentations, hospitalisations, treatment episodes and deaths relating to alcohol.

This type of database would provide a comprehensive picture of alcohol consumption and harm in Victoria. It could be used to improve the effectiveness and efficiency of efforts to minimise alcohol-related harm by addressing the information gaps that currently exist for robust strategy development, focusing enforcement and compliance activities on high-risk areas, and encouraging greater inter-agency cooperation.

## Liquor licensing regime

The harm minimisation objective of the *Liquor Control Reform Act 1998* is intended to be met by measures that include providing adequate controls over the supply and consumption of liquor. The planning permit and liquor licence application processes are important mechanisms to control the licensed environment.

The Department of Planning and Community Development administers the planning system, which provides the framework for regulating and managing how land is developed and used. Each of the 79 local governments has a planning scheme, which combines both state-wide and local policies and provisions. Councils use the planning scheme to decide whether to grant or refuse planning permits. Planning permits are required for most types of licensed premises.

Until February 2012, the Director of Liquor Licensing granted or refused liquor licences based on the suitability of the applicant and the potential impact of the licensed premises on the amenity of the surrounding area. This function transferred to VCGLR in February 2012.

The audit assessed the extent to which agencies are meeting the harm minimisation objective of the Act, the effectiveness and efficiency of the liquor licensing application process, including its interface with planning, and the appropriateness of the industry training overseen by VCGLR.

## Audit findings

The liquor licensing regime is not effectively minimising alcohol-related harm due to a lack of transparency of decision-making, guidance on regulatory processes and engagement from councils. Administrative errors, poor records management and inconsistencies between liquor licence and planning permit conditions have further limited the effectiveness of the process.

Commercial interests have historically taken precedence over public health and community interests, thus compromising agencies' abilities to meet the Act's harm minimisation objective. The planning permit and liquor licence application processes were enhanced following a series of joint reviews by DOJ and the Department of Planning and Community Development in 2009 and 2010. These reviews were comprehensive and evidence-based. However, the recommendations from these reviews were not accepted in full.

Although there has been a recent shift towards better consideration of public health and community interests, the existing regime is still weighted in favour of the liquor and hospitality industry. The number of objections to liquor licence applications by councils is exceptionally low.

Councils' ability to influence the liquor and hospitality industry on behalf of the communities they represent is restricted by shortcomings in the planning permit and liquor licence application processes. The grounds for objecting to a liquor licence are narrow, and the evidentiary requirements and decision-making process for contested licence applications are not clear.

While VCGLR should provide clearer guidance on the liquor licensing process, councils should do more to work within the existing planning and liquor licensing arrangements to reduce their current sense of disempowerment and dissatisfaction. For example, councils could develop a local policy for licensed premises to guide decision-making on planning permits, or insert and enforce specific conditions on licensed premises' planning permits.

DOJ implemented improvements in the mandatory industry training for licensees and staff following reviews in 2009 and 2010. There are, however, some inconsistencies in how the training is delivered. As VCGLR assumed responsibility for training in 2012, VCGLR could remedy this by more closely overseeing training providers. It could also further tailor the training to better meet attendees' needs.

Training is important to assist licensees and their staff to understand their obligations. However, applying this training in a work environment can be challenging. Many licensees meet their legislative obligations. However, for those who are less diligent, enforcement—or the prospect of enforcement—and its associated financial penalties is likely to promote more appropriate industry practices.

## Enforcement, compliance and policing

Victoria Police enforces breaches of the *Liquor Control Reform Act 1998* and public order offences relating to alcohol, and carries out targeted and covert operations throughout the state to reduce harm in and around licensed premises.

As foreshadowed in *Restoring the balance: Victoria's alcohol action plan 2008–13* (3), DOJ created a Compliance Unit in 2009. The Compliance Unit inspects licensed premises and monitors licensees' compliance with their liquor licences and obligations under the Act. It was intended to complement Victoria Police's activities, thereby allowing police officers to focus on more serious offences.

In February 2012 the Compliance Unit transferred from DOJ to VCGLR.

The audit assessed the effectiveness and efficiency of enforcement activities.

## Audit findings

Compliance inspections identify licensees' compliance with the administrative requirements of their liquor licences, while Victoria Police focuses on alcohol-related offences by individuals. The compliance inspection program is having a noticeable and positive effect on licensees' compliance with the administrative requirements of their liquor licences.

Victoria Police has successfully carried out targeted and covert operations, and implemented other proactive initiatives, such as educational programs in local communities. However, there is no whole-of-government alcohol enforcement strategy. Although there have been localised examples of joint operations, inadequate strategic planning by and between enforcement agencies means there are gaps in the enforcement approach. Victoria Police and the Compliance Unit have not adequately targeted licensees who supply alcohol unlawfully.

Of the VCGLR Compliance Unit's total inspections carried out by the regional compliance inspectors in 2010–11, only 20 per cent were conducted at the weekend, which is when most alcohol-related harm occurs. Inspectors' work patterns should be amended as a matter of priority, as the current arrangements deliver poor value-for-money for taxpayers.

The Compliance Unit has adopted an educative approach to licensees to help them understand their obligations. However, for more serious or ongoing breaches, the Compliance Unit uses disciplinary actions, enforceable undertakings, penalty notices and written warnings. Delays in processing these enforcement actions—which are not entirely within the Compliance Unit's control—have allowed poorly managed venues to continue to operate as sources of alcohol-related harm. Penalties for licensees who fail to comply with their obligations have recently been strengthened, with a demerit points system coming into effect in 2012. This initiative is expected to improve compliance rates, as consistent non-compliance will result in licences being automatically suspended.

There is no formal policy on alcohol enforcement and harm minimisation, or a state-wide operational framework to guide Victoria Police's enforcement action against licensees.

Victoria Police's alcohol enforcement activities range from major planned operations conducted in Melbourne and the large regional centres to specifically tailored enforcement operations and educational programs to address issues in local communities.

Victoria Police's enforcement is effectively targeting anti-social behaviour by individuals, but not the source of the alcohol.

The diverse and dispersed nature of Victoria Police's responsibilities requires a clear overarching strategic and operational framework for policing alcohol-related harm to maximise effectiveness and efficiency. This framework is not in place. Victoria Police has not taken sufficient action to direct and coordinate alcohol enforcement.

Responsibility for developing and implementing alcohol policing strategy is highly devolved, with local officers planning and carrying out their own enforcement activities. The current lack of centralised direction, coordination and training increases the risk of inconsistent practices and inefficiencies through duplication of effort.

The systems and processes for recording and analysing alcohol-related crime are weak. This reduces the availability and quality of intelligence data, which constrains Victoria Police's ability to appropriately target enforcement action to the areas and premises where action is most urgently required.

Liquor legislation is not adequately supporting enforcement activities due to unclear legal definitions and inconsistencies. Enforcement agencies are hindered in their efforts to take appropriate action against licensees who are unlawfully supplying alcohol by unclear legal definitions, which allow

subjective interpretations of the Act. These licensees are avoiding penalties and are continuing to operate, tainting the whole licensed hospitality industry. This is a poor outcome for the community and a waste of public sector resources, particularly for the police and courts.

Inconsistencies exist within the *Liquor Control Reform Act 1998* itself, and between the Act and other legislation and agency guidance. Underage drinking is a case in point. Although health bodies recommend delaying the age at which alcohol is first consumed, minors are permitted to consume alcohol in certain supervised circumstances. The penalty for a gambling provider that allows a minor to gamble is double the penalty for a licensee who illegally supplies a minor with alcohol. The penalty for a body corporate that sells tobacco to a minor is 10 times higher. Although the health impacts of smoking may be greater, the consumption of alcohol can result in adverse consequences—such as anti-social behaviour—that affect the wider community.

These inconsistencies undermine efforts to minimise harm. Since the functions of the gambling and liquor regulators have recently been integrated into one body, it is an opportune time to review and rationalise legislation and processes for consistency and appropriateness.

## Audit conclusions

While various strategies and initiatives to prevent and reduce harm have been implemented, efforts have been hampered by:

- the lack of a whole-of-government policy position on the role of alcohol in society
- poorly chosen, implemented and evaluated initiatives
- inconsistent and cumbersome liquor licensing processes and legislation
- the lack of coordinated, intelligence-led and targeted enforcement.

Instead of a coherent strategic framework consisting of a suite of targeted, evidence-based, complementary and well-coordinated initiatives, DOJ's alcohol initiatives have been largely fragmented, superficial and reactive. Their lack of effectiveness is demonstrated by the same issues—such as the prevalence of underage drinking—persisting year after year, despite being highlighted in consecutive strategies as areas of particular focus.

The liquor licensing process is complex, inconsistent and lacking transparency. The requirement of the *Liquor Control Reform Act 1998* for liquor licensing decisions to take into account community expectations and responsible industry development causes inevitable tension between these competing interests.

Enforcement of alcohol-related offences committed by licensees has received greater attention since DOJ established a Compliance Unit in 2009. This unit, along with the liquor licence regulation and administration functions, moved from DOJ to the newly created VCGLR in February 2012.

While Victoria Police and the Compliance Unit are targeting anti-social behaviour by individuals and minor breaches of the Act by licensees, there is no overarching whole-of-government enforcement strategy to comprehensively address unlawful supply, particularly service to intoxicated patrons and minors, which is the cause of much of the alcohol-related harm.

A fundamental change in approach to strategy development, licensing and enforcement is required before any noticeable impact on reducing harm is likely.



## Recommendations

Ten recommendations were made to improve the effectiveness of justice strategies in preventing and reducing alcohol-related harm.

1. The Department of Health should, as the coordinating department for the new alcohol and drug strategy, lead the development of:
  - a coherent whole-of-government policy position on alcohol consumption and the liquor and hospitality Industry
  - clear lines of accountability for alcohol policy implementation
  - a consolidated database to facilitate meaningful and accessible analysis of alcohol consumption and harm.
2. The Department of Health should:
  - identify and apply the lessons learned from the development and implementation of *Restoring the balance: Victoria's alcohol action plan 2008–2013* to inform future strategy development
  - improve the quality of data it collects on alcohol consumption and harm.
3. The Department of Justice should:
  - pilot the collection and analysis of liquor sales data from wholesalers to retailers
  - improve communication with stakeholders in the development and implementation of initiatives.
4. The Department of Justice should, together with the Department of Planning and Community Development and in consultation with local councils, overhaul the planning permit and liquor licence application processes to:
  - better address community and health concerns
  - improve efficiency
  - clarify roles and responsibilities
  - incorporate an appropriate level of consultation and scrutiny.
5. The Department of Planning and Community Development should:
  - create a model local planning policy for licensed premises
  - require councils to adopt a local planning policy for licensed premises where there is a particular need or concern.
6. The Victorian Commission for Gambling and Liquor Regulation should:
  - review its licensing administration practices
  - improve its records management and data integrity
  - exercise closer oversight over training providers to maintain standards and remove inconsistencies
  - tailor the mandatory industry training to better meet attendees' needs.
7. The Victorian Commission for Gambling and Liquor Regulation and Victoria Police should:
  - develop a comprehensive and collaborative enforcement strategy to minimise harm more effectively and efficiently
  - carry out more targeted and intelligence-led enforcement activities.
8. The Victorian Commission for Gambling and Liquor Regulation should implement robust, efficient and, where appropriate, consistent practices across its compliance functions.
9. Victoria Police should:
  - develop stronger central leadership for alcohol enforcement policy and activities
  - improve the quality of the data it collects on alcohol-related crime.
10. The Department of Justice should review the *Liquor Control Reform Act 1998* to facilitate more effective and efficient enforcement action.

[Subsequent to the Auditor-General's audit report, in January 2013 the Victorian Government released a new alcohol and drug strategy titled *Reducing the alcohol and drug toll: Victoria's plan 2013–2017*, which includes strengthened reforms of liquor licensing laws (5).]

## References

1. Victorian Auditor-General. *Effectiveness of justice strategies in preventing and reducing alcohol-related harm*. Melbourne: State of Victoria, 2012. Accessed 12 February 2014 <[www.audit.vic.gov.au/reports\\_and\\_publications/latest\\_reports/2011-12/20120620-alcohol.aspx](http://www.audit.vic.gov.au/reports_and_publications/latest_reports/2011-12/20120620-alcohol.aspx)>.
2. Department of Human Services. *Victorian Alcohol Strategy: Stage One*. Melbourne: State Government of Victoria, 2002. Accessed 12 February 2014 <<http://docs.health.vic.gov.au/docs/doc/Victorian-Alcohol-Strategy:-Stage-1---June-2002>>.
3. Ministerial Taskforce on Alcohol and Public Safety. *Restoring the balance: Victoria's alcohol action plan 2008–2013*. Melbourne: State Government of Victoria, 2008. Accessed 12 February 2014 <[http://docs.health.vic.gov.au/docs/doc/80072E24D64DB7CACA2578A10002E340/\\$FILE/action\\_plan.pdf](http://docs.health.vic.gov.au/docs/doc/80072E24D64DB7CACA2578A10002E340/$FILE/action_plan.pdf)>.
4. Victorian Liberal Nationals Coalition. *The Victorian Liberal Nationals Coalition Plan for Liquor Licensing*. Melbourne: Victorian Liberal Nationals Coalition, 2010. Accessed 31 March 2014 <[http://vic.liberal.org.au/webData/policies\\_others/LiquorLicensing.pdf](http://vic.liberal.org.au/webData/policies_others/LiquorLicensing.pdf)>.
5. Department of Human Services. *Reducing the alcohol and drug toll: Victoria's plan 2013–2017*. Melbourne: State Government of Victoria, 2012. Accessed 12 February 2014 <[http://docs.health.vic.gov.au/docs/doc/1D4BF7FF3C551C4DCA257AFD00707A93/\\$FILE/Reducing-AOD-toll.pdf](http://docs.health.vic.gov.au/docs/doc/1D4BF7FF3C551C4DCA257AFD00707A93/$FILE/Reducing-AOD-toll.pdf)>.

# Final words

---



# Chapter 24

## Future directions for liquor licensing legislation

Michael Thorn and Caterina Giorgi

Regulating alcohol by licensing its supply has long been a principal recourse employed by governments to control the availability of alcohol in our community. It is, as a consequence, important to understand how regulatory systems operate—their strengths and weaknesses—and the influences on them.

This is a neglected area of study and this book serves to connect researchers in Australia who are undertaking studies on alcohol regulation and people working across various sectors to develop, implement and enforce these policies and laws. It provides the most up-to-date evidence on effective regulatory approaches to liquor licensing.

The context for producing this book is the increasing disquiet in many Australian communities about the rising levels of harm and the reduced community amenity caused by the ready availability of alcohol. This book will assist those charged with managing responses to this concern and help them to better negotiate this important area of government regulation.

The book reveals the ongoing tension between public and private interests. This tension is plainly evident when disputes erupt over the operation of a licensed venue and community members are frustrated by their inability to secure effective controls on these operations. The need for greater transparency and community engagement in licensing matters is essential for the maintenance of confidence in the system.

For those looking for leads about how to improve liquor regulation, the book's analyses are helpful in understanding possible reform directions and for developing policy to respond to emerging and ongoing problems. They amount to a challenge to legislators and regulators to be more creative in responding to the problems that alcohol retailing causes. As well as pointing to new legislation, there are suggestions about the 'art of the possible' and interpreting the black-letter law more creatively, revealing new solutions to longstanding and intractable problems.

There is a clear sense that 'all is not lost' and it is possible to move away from the precipice caused by economic libertarianism, putting public interest at the centre of alcohol control and regulation. It may have taken some time, but inevitably and indubitably the community is slowly winning back its right to decide where to draw the line on too much alcohol.

### The regulatory environment

As Ann Roche notes in Chapter 2, there has been a quite extraordinary growth in the number of licensed liquor outlets over the past 15 years. This can be linked to a more permissive regulatory environment stemming from economic and trade liberalisation, competition policy reforms, and a general preference for deregulation of controls over alcohol's distribution and sale. In addition, price competition and product innovation have added significantly to alcohol's appeal and availability.

These liberalisations have inevitably had unintended consequences and caused impositions on communities. One principal policy option available to governments to reduce harms from drinking is to regulate the supply of liquor. This book examines the contribution that regulation through liquor licensing can make to further the public interest, whether on health, safety or community amenity grounds.

Robin Room's introductory chapter charts regulation's historical rationale and changes over the years. Elizabeth Manton and Grazyna Zajdow (Chapter 3) trace the recent history of liquor regulation to show that, by 2012, the two main themes in the public interest objectives in liquor licensing legislation were community amenity and harm minimisation. Amy Pennay (Chapter 13) writes about the challenges of identifying intoxication and the limitations of responsible service of alcohol provisions that are mandated in most liquor control legislation.

## Public interest

The reference in Chapter 11 to Cavan's 1966 observation that when it comes to drinking we 'permit a latitude of behaviour typically greater than that permitted in many other public settings' lies at the centre of the liquor regulation conundrum, and has important implications for how the community, governments and the judiciary perceive public interest (1). There is no mechanistic solution to the regulation of alcohol, and even if there was, changing public attitudes and values would quickly undermine any system that purports to have found the answer.

Manton and Zajdow describe the 20-year rise of public interest, defined largely as community amenity and harm minimisation, as a belated replacement once the concept of community 'need' disappeared from liquor regulation, underlining the fact that environments do change and systems of regulation need to change and adjust accordingly. However, the writers conclude that the practical import of the compensatory move towards defining public interest in terms of harm minimisation and community amenity has been limited.

But the trend is clear, as Manton points out in Chapter 4. This chapter is an important examination of more than 50 recent cases relating to reviews of objections to liquor licence applications or complaints about licensees. Its rare analysis will be welcomed by those working in alcohol regulation. It points to important developments in Western Australia, where harm minimisation arguments—both in general and in relation to minors and vulnerable 'at risk' populations—have been successful in stopping licensing approvals. The Western Australian successes reflect a different legislative approach, which puts the onus on the applicant to demonstrate that granting a licence is in the public interest. This should serve as a guide to other jurisdictions seeking to strengthen public interest provisions, which undermine any reasonable person's understanding of public interest.

Sondra Davoren and Paula O'Brien discuss the challenges of meeting harm minimisation objects in Victorian legislation and how the measures that purport to minimise harm are used to support arguments about the operation of liquor outlets. They analyse at length the important *Kordister Pty Ltd v Director of Liquor Licensing (Kordister)* case, where the Victorian Court of Appeal found that the Victorian Civil and Administrative Tribunal had been wrong to narrow its consideration of harm minimisation. The implication is that if harm minimisation is a factor, then a 'conservative', 'precautionary approach' is correct, such that 'if an appreciable risk of harm is identified, harm minimisation favours avoiding such potential risk unless it can be positively justified' (2:para 34).

They offer further insights into how to answer the question of determining what harm minimisation might mean—which is important in better understanding the meaning of the public interest. As Davoren and O'Brien say, 'only Victoria is legally bound by the approach to harm minimisation taken in *Kordister* [but] the case...has persuasive value in all other Australian jurisdictions that have harm minimisation or related objects in their liquor licensing legislation' (Chapter 5, p.45).

## Tipping the balance

*Kordister* has a surprising aspect that will be particularly useful in tipping the balance towards harm minimisation approaches to reducing alcohol-related harm. In making its ruling, the Court of Appeal was confronted with the question of a ruling on causal connection between the trading of a liquor outlet and harm. For far too long the alcohol industry has been able to forestall constraints on trade by successfully arguing that the trade of an individual outlet had to be connected to actual harms caused by drinkers; this burden of proof has made it all but impossible to have a new licence refused. However, in the case of *Kordister*, the court said the risk of harm from a particular liquor licence depends not just on the individual conduct of the licensee but on a range of 'social and cultural' factors connected with the licence, and went on to spell out what these are. This determination about general evidence is possibly as important a legal interpretation as the discussion about harm minimisation, and is highly significant.

In their respective chapters, Tony Brown (Chapter 6) and Lisa Buffinton (Chapter 7) confront the imbalance between the powerful liquor industry and communities. Brown examines how communities negotiate the complexity of liquor regulation in New South Wales, especially the need to recognise the interconnection between planning systems and the separate and distinct liquor regulatory system. The case studies show how communities are edging forward in the battle to make themselves heard in a system that places too many burdens on them to show why a liquor licence should not be granted or why a licensee should be sanctioned. First, however, Brown usefully and briefly describes how the two separate systems work, their interplay and their critical differences.

Brown's analysis of four recent cases in New South Wales is instructive for a number of reasons. Tracing the decision record reveals important changes in the treatment of different cases, which at the centre involve harm minimisation and community amenity. The analysis also shows the inconsistency displayed by various institutional actors across the system, including police, health and local government, which can be deeply frustrating to communities.

Ultimately, the analysis reveals the evidentiary burden on communities seeking to contest the ambitions of liquor retailers—be they pubs or 'big-box' bottle shops. Buffinton continues this theme, and her analysis importantly explores the imbalance problem, concluding with a proposal for an institutional response to empower communities in exercising their democratic right to oppose or seek judicial and civil remedies to problems with the operations of licensed premises. She identifies four issues that limit a community's capacity to respond, namely research requirements, communication and networking needs, participation costs and access to independent advice.

The proposal to establish a Community Defenders' Office (CDO), modelled on similar institutions in the environmental arena, and an accompanying service to provide 'resident-friendly' information about how to negotiate the complex system of liquor regulation is worthy of serious consideration by policy-makers.

Buffinton's final salutary point is well worth remembering:

Some community needs...cannot be met through the provision of CDO-type support alone. Community involvement in licensing matters also needs to be supported by legislative and regulatory reforms that better facilitate and permit community input. Such reforms should enhance community engagement as a tool that supports the authorities to make informed decisions that best serve the local public interest. (p.61)

## Instruments and avenues for harm minimisation

John Doyle's report in Chapter 23 is a devastating critique of the failure of alcohol-control institutions. It is both depressing and illuminating—depressing, because it shows where a comprehensive plan to reduce alcohol-related harms has gone so wrong; illuminating, because it shows what needs to be done to rectify the situation.

Doyle, the Victorian Auditor-General, summarises his office's 2012 review report (3). The full report should be compulsory reading for any public official working in the field of alcohol control because he carefully works through the structural, systemic and enforcement problems that have diminished the effectiveness of Victoria's alcohol harm minimisation strategy.

The chapters on police perspectives (Chapter 19) and civilian licensing inspectors (Chapter 20) complement the Auditor-General's chapter. Civilian inspectors, it could be said, are an under-performing resource in an area where they should be having a greater impact. The reasons for this are many but, given the number of compliance and enforcement tasks that need to be attended to, governments should be working harder to make better use of specialist civilian teams. Nevertheless, there are very real performance challenges, particularly those relating to collaborating with police and establishing effective relationships with licensees. Claire Wilkinson and Sarah MacLean's recommendation for the development of overarching enforcement strategies to guide the work of police and civilian inspectors is important.

The chapter on police perspectives is interesting because of the prominent role police play in enforcement and compliance and the reliance the public places on them to maintain safety and public order. The research shows that police are fully sensitised to the factors that contribute to alcohol-related harms, both on- and off-licence, and equally well aware of the public policy issues that drive offending and the recourses available to policy-makers. Roger Nicholas, Allan Trifonoff and Ann Roche find a rather jaundiced view on liquor licensing regimes among police, best summed up by the following:

Some of the police described the current liquor licensing legislation in Australia as a 'toothless tiger' that has not only failed to evolve to address contemporary issues but in many cases has contributed to existing problems. Respondents believed much of Australia's liquor licensing legislation required reform if it was to enable them to better respond to alcohol-related harm. (p.186)

In Chapter 8, on aspects of alcohol and the planning system, Alison Ziller deconstructs the substantial flaws in New South Wales' social impact assessment system and describes how this can be significantly improved. In doing so, she identifies how its current weaknesses can be turned into opportunities for communities battling to prevent the approval of a new licence or the extension of an existing licence, and advises how officials can make better use of systems that allow for social impact assessment.

Planning is at the heart of modern cities and it is arguable that planners are duty-bound to address issues that are likely to, and do, cause civic problems. In Chapter 9 Timothy Bradley provides a clear account of what planners can do to mitigate the problems of increasing density of licensed outlets in our communities.

Nevertheless, the planning profession is conflicted on the issue of alcohol's harms. Some are well aware of the problems; others see planning as an objective profession whose responsibilities do not extend to making moral judgments about people's behaviours. Bradley dismisses this latter view well.

Two chapters explore environmental design issues. Chapter 11 discusses how factors from physical design to serving practices play a role in reducing or exacerbating alcohol-related harm. Chapter 12 provides lessons for overcoming serious issues through better crowd management techniques. These are cost-effective harm minimisation recourses that should have wide application.



Michael Livingston points to the concerning lack of attention that has been given to packaged liquor outlets. His analysis compellingly illustrates that the packaged liquor market is contributing substantially to harms and 'licensing and planning decisions need to extend beyond a narrow approach, which focuses on acute harms that occur in and around specific outlets, to a broader understanding of the impact of liquor outlets at the local level' (Chapter 10, p.83).

Connected to Livingston's bottle shop challenge is Sandra Jones' examination in Chapter 15 of point-of-sale promotions. In the current environment, if there are more packaged outlets there will be more promotions. Jones clearly establishes that governments have been reluctant to regulate this aspect of the liquor industry, and uses her research to show where and how promotions are associated with increased purchase volume and consumption, and why liquor promotions warrant greater attention by authorities.

If there is one area where there should be no contest about the efficacy of increased regulation and harm reduction, it is in limiting trading hours. Violence in night-time entertainment precincts has been the focus of significant research attention for many years. This book devotes significant space to a number of writers to canvass the impact of restricting trading hours.

Manton, Room and Livingston begin this discussion in Chapter 14 by documenting a century of change, describing this as the 'long retreat from temperance-era restrictions' (p.122). It is important information for politicians and policy-makers because too often there are critical misunderstandings about this history. The authors also canvass the evidence relating to harm caused by extended trading, and the effect of pulling back these trading arrangements. Unsurprisingly, the Newcastle experience is central to this discussion. This experience and comparative studies of night-time economies as various as Newcastle, Perth, Geelong, Sydney and Wollongong are documented in Chapter 21, which looks at the Dealing with Alcohol and the Night-Time Economy (DANTE) study, and Chapter 22, which describes the Patron Offending and Intoxication in Night-Time Entertainment Districts (POINTED) study. Both these studies have contributed decisively in recent public discussion about placing limits on opening hours.

The results are compelling in the DANTE case: mandating earlier closing times had an immediate and long-term effect on alcohol-related harm in Newcastle, while in Geelong a series of voluntary and lesser measures appeared to make no difference in the rate of harms. The DANTE study also found pre-drinking was a major impediment to minimising harms, and concluded that the reason for Newcastle's success was that the measures focused on reducing consumption at times when there is a greatest risk of harm.

Liquor accords are commonly seen in night-time entertainment precincts. The actors and the degree of formality vary, but at their heart is primarily a voluntary agreement between licensees and police in a locality to address alcohol-related harm. Accords are popular with many groups, especially licensees, police and politicians. In Chapter 17 Manton sets out to establish whether they achieve their stated goal, which is important given the heavy reliance on accords to foster 'responsible drinking' and managing alcohol-related harm.

Manton concludes that there is insufficient evidence to conclude that liquor accords are effective in reducing harms. She goes on to say that liquor accords are successful 'because the objective measures of their success have expanded to include factors other than harm reduction' (p.163), but 'liquor accords are popular because they give the appearance of doing something, while not interfering with the licensees' trade' (p.164).

It is likely that accords will remain a part of the night-time licensing fabric, but they should not be relied on to stop the violence that is of such concern to the community.

Alcohol Management Plans (AMPs), mostly seen in operation in remote Indigenous communities, are distinguished from accords because they address supply as well as harm reduction strategies, unlike accords, which often centre on demand reduction. Chapter 18 shows that, unlike accords, AMPs have been evaluated, and there is enough evidence to show that they can have sustainable outcomes when locally driven and owned.

However, there are many confounding factors. The full terms of plans are frequently not implemented, the studies are limited and plans are not always community-driven. It remains to be seen if these are transferable, or if the emerging local government-instigated form of AMPs converges with the Indigenous form in some sort of bottom-up push to reduce the availability of alcohol and hence its consumption.

The POINTED study and its predecessor (DANTE) have shown that the harms arising from the night-time entertainment precincts are substantial but avoidable. Measures to reduce harm are plentiful, and some have a strong evidence base, but they require public pressure and political will. The POINTED study was undertaken in five cities across the country and is the largest of its kind in Australia. The study provides invaluable insights for policy-makers about the trajectory of the night in entertainment precincts from Perth to Sydney:

Mixing alcohol and human beings can sometimes destroy lives and it is the responsibility of government to ensure public safety and amenity are balanced with the profits of business and the hedonistic desires of young people looking for a good time. Although young adults are empowered and independent, they are the products of our cultural values and, once intoxicated, many become unable to make optimal decisions. (p.222)

The DANTE study proposes the establishment of an Alcohol-Related Harm Index as a systematic way to measure alcohol-related harm: 'The Alcohol-Related Harm Index would ideally be widely available and in useable form to at least postcode level, and ideally the data would be accessed through independent crime statistics bodies in all states and territories' (p.208).

This is an important proposal for decision makers and policy officials to consider. An economic solution to mitigating harm is to price risk. A number of jurisdictions have introduced risk-based licensing fee regimes but, interestingly, none had been formally evaluated until the research undertaken by Rebecca Mathews and Tim Legrand in their study of the Australian Capital Territory system (Chapter 16). This study, which explores changes in alcohol-related offences since risk-based licensing was introduced in 2010, found a reduction in reported offending associated with the introduction of risk-based licensing.

The Australian Capital Territory's scheme was established so that the additional fee revenue was returned in the form of additional police, and it is unclear whether this had the larger impact on reducing offence rates. Nevertheless, this first-time study is very important in understanding the impact of pricing risk. Either way, there is a compelling case that fees should be structured to accord with the relative and absolute risk that different types of licensed outlets pose, and their respective burden on the state.

## Conclusions

*Stemming the tide of alcohol: liquor licensing and the public interest* unapologetically tackles the issue of regulating outlets that sell alcohol from the harm minimisation perspective. This means that the focus is overwhelmingly on public and not private interests. It comes at a time when the tide appears to be turning against a system that has, since the mid-1990s, preferred competition over need. The consequence is, in part, that the growing body of research and analysis about the retail trading environment and the instruments of control is becoming very important for public policy decision-makers.

It is clear in this book that achievement of the public interest requires good evidence supported by an expansion of data collection and the proper evaluation of policy options. The evidence base in some areas is now strong; for example, there is strong evidence that reductions in trading hours work, and that Alcohol Management Plans have had some major effects on reducing harms. A proposal for an alcohol-related harm index is one example of using improved data in a creative way.

Although the harm minimisation objective is embedded in most liquor licensing legislation, to date it has not been implemented very effectively to protect communities from alcohol-related harms.

Several key examples are outlined in the book to challenge this ineffectiveness. First, the situation in Western Australia—of placing the burden of proof on a licence applicant to show that a liquor licence is in the public interest, rather than expecting objectors to provide evidence of associated harms—is a development that could be expanded to other jurisdictions. Second, the *Kordister* case establishes for the first time that evidence beyond an individual licensee or licence can be used in determining a licence application.

In the recent period of sustained growth in the number of licences, most of the community conflicts discussed in this book have been about the issuing of new licences. In many parts of Australia we now have a system with a superabundance of licences, but, as Doyle documents, very inadequate enforcement of the conditions for a licence to continue. In implementing the harm minimisation objectives of liquor licensing, we can expect licensing systems and community advocacy to give much greater attention to needs for controls and conditions on existing licences. To carry out this task in the public interest, detailed and accurate data on harmful incidents and their precursors is a crucial need.

For people engaging with liquor licensing systems, whether community members, advocacy organisations, local governments or police, this book demonstrates that community action can work. Although there are many barriers to engaging with liquor licensing processes, there are significant examples of communities overcoming these barriers to successfully object to new liquor licences or changes in trade of existing liquor licences. Communities should be energised by this and should use this information to enable them to have a greater say in decision-making processes.

For decision-makers this book demonstrates that there is a clear agenda for action to reduce alcohol-related harms. When confronted with crisis situations, decision-makers are often called upon to develop policy solutions quickly to address the levels of community concern. This book provides information on how these situations can be avoided and on policy responses that can address these concerns.

## References

1. Cavan S. *Liquor license: an ethnography of bar behavior*. Chicago: Aldine Publishing Company, 1966.
2. *Kordister Pty Ltd v Director of Liquor Licensing & Anor* [2012] VSCA 325 (19 December 2012). Australasian Legal Information Institute (AustLII). Accessed 20 June 2013 <[www.austlii.edu.au/au/cases/vic/VSCA/2012/325.html](http://www.austlii.edu.au/au/cases/vic/VSCA/2012/325.html)>.
3. Victorian Auditor-General. *Effectiveness of justice strategies in preventing and reducing alcohol-related harm*. Melbourne: State of Victoria, 2012. Accessed 12 February 2014 <[www.audit.vic.gov.au/reports\\_and\\_publications/latest\\_reports/2011-12/20120620-alcohol.aspx](http://www.audit.vic.gov.au/reports_and_publications/latest_reports/2011-12/20120620-alcohol.aspx)>.

## Contributors

**Lance Barrie** is the Research Manager at the Centre for Health Initiatives, University of Wollongong, New South Wales. He is undertaking his PhD investigating secondary supply of alcohol to people under the age of 18. His other research interests include alcohol and young people and alcohol marketing.

**Timothy Bradley** is an economist and former consultant with the Allen Consulting Group. As a consultant, Timothy was regularly engaged to review and assess government policies regarding liquor licensing and regulation. He has led major reviews of policies in New South Wales, Victoria, the Northern Territory and the Australian Capital Territory.

**Alyson Brown** has worked in the area of public health for the past 17 years, primarily focusing on alcohol management plans. She has experience in politics, policy, project management, service development and community education. Alyson also has a Master's degree in Public Health.

**Tony Brown** is a lawyer who has acted (and continues to act) in a voluntary capacity to assist and represent communities throughout New South Wales that are trying to reduce alcohol-related harm by participating in the liquor licensing process. He is also Chairperson of the Newcastle Community Drug Action Team.

**Lisa Buffinton** has a combined Arts–Commerce degree from the Australian National University. She furthered her interest in public policy as an intern, and later as a Policy Officer, for the Foundation for Alcohol Research and Education. Lisa worked in Harts Range, Northern Territory, for the Linkz Odyssey Program in 2014.

**Dr Richard Chenhall** is a Senior Lecturer at the Centre for Health and Society at The University of Melbourne. His work in medical anthropology focuses on a range of topics in Indigenous health and substance misuse and treatment.

**Professor Tanya Chikritzhs** leads the Alcohol Policy Research team at the National Drug Research Institute. She has a background in epidemiology and biostatistics and 15 years' experience in alcohol research. In 2012 Tanya was awarded the Commonwealth Health Minister's Award for Excellence in Health and Medical Research and currently holds a National Health and Medical Research Council Career Development Fellowship.

**Dr Paul Cozens** is an environmental criminologist with expertise in Designing Out Crime. He is a Senior Lecturer at Curtin University's Department of Urban and Regional Planning. He has published on crime, sustainability and urban space, and the night-time economy. He is a musician and a consumer of the night-time economy.

**Professor Peter d'Abbs** is Professor of Substance Misuse Studies at Menzies School of Health Research in Darwin. He also holds adjunct positions with the Melbourne School of Population and Global Health at The University of Melbourne, and at James Cook University, Queensland. Peter is a sociologist with a research background in alcohol and other drug policy issues.

**Sondra Davoren** is a Senior Legal Advisor at Cancer Council Victoria working in alcohol law and policy. She is a member of the Australian National Preventive Health Agency's Expert Committee on Alcohol and has published papers on alcohol advertising regulation, liquor licensing, and legal and regulatory interventions to reduce alcohol-related cancers.

**John Doyle** commenced his term as Victoria's 26th Auditor-General on 1 July 2013, following six years as Auditor-General of British Columbia, Canada. John is an Adjunct Professor at The University of Notre Dame Australia, where he was formerly the Head of the School of Accounting & Finance and has held senior financial management positions across the public sector.

**Nicolas Droste** is a PhD candidate at Deakin University, Geelong, and is currently investigating the consumption patterns, motivations and harms associated with combined alcohol and energy drink use. His research interests cover substance use in nightlife and licensed venues, effects of pre-drinking, intoxication detection and youth outreach.

**Karen Gillham** has a Master of Social Science (Social Research) and has worked in health promotion for 17 years, leading evidence-based health promotion initiatives in numerous settings, including health services, schools and licensed premises. Karen has published extensively in public health and currently has a service management, administrative and research role.

**William Gilmore** is a Research Fellow with the Alcohol Policy Research team at the National Drug Research Institute, Curtin University. He has degrees as a Bachelor of Science (Hons) in geography and a Master of Science in geographic information science, with a particular interest in the applications of spatial analysis to public health.

**Caterina Giorgi** has a Bachelor of Science (Hons) in Population Health and is the Director of Policy and Research at the Foundation for Alcohol Research and Education. Caterina has extensive experience working in government and not-for-profit policy development in a range of social and health policy areas.

**Dr Shane Greive** is a planner with an interest in central city transformations. He is a Lecturer at Curtin University's Department of Urban and Regional Planning. His commissioned research includes land use and pedestrian surveys and late-night taxi ranks. Shane is an avid music 'punter' and well-known within Perth's night-time economy.

**Daniel Groombridge** has a Bachelor of Architecture and a Master of Public Health. Over the past five years, he has been involved in public health interventions and research in the areas of alcohol-related harm, tobacco legislation, environmental health and Aboriginal health.

**Luke Hutchins** is a Policy Associate at the Foundation for Young Australians. Previously, he was a Research Assistant at the Centre for Alcohol Policy Research at Turning Point. He is currently studying for a Bachelor of Arts with a major in criminology at The University of Melbourne.

**Dr Rebecca Jenkinson** is a National Health and Medical Research Council Postdoctoral Fellow at the Burnet Institute and Australian Institute of Family Studies. Rebecca coordinates a range of studies related to young people's alcohol and other drug use and related risk behaviours.

**Professor Sandra C Jones** is Professor and Director of the Centre for Health and Social Research (CHaSR), Australian Catholic University, Victoria, and an Australian Research Council Future Fellow. Her research focuses on the relationship between media and health and the use of social marketing to improve population health, with a particular focus on young people and alcohol marketing.

**Dr Tina Lam** joined the National Drug Research Institute in 2007, specialising in the area of young people and alcohol. Her projects have involved school leavers' celebrations, longitudinally exploring the journey of treatment clients, the night-time economy, point-of-sale advertising, injecting drug users and young risky drinkers.

**Professor Marcia Langton** holds the Foundation Chair of Australian Indigenous Studies at The University of Melbourne and became a Fellow of the Academy of Social Sciences in 2001. An anthropologist and geographer, she has made significant academic contributions to Indigenous studies and research, as well as government and non-government policy.

**Christophe Lecathelinais** graduated in 1998 in France as a Master of Science in Applied Mathematics and has been involved as a statistician in numerous health prevention projects for Hunter New England Population Health since 2002.

**Dr Tim Legrand** is a Research Fellow at the Australian Research Council Centre of Excellence in Policing and Security at the Australian National University. His research focuses on policing and security, international policy learning, evidence-based policy, emergency public policy and critical infrastructure protection. He is also the co-editor (with Allan McConnell) of *Emergency policy: global influences on national crisis management* (Ashgate, 2012).

**Dr Michael Livingston** has a background in criminology and statistics and is a quantitative public health researcher interested in the impact of alcohol policies and the epidemiology of alcohol consumption and related harms. He has published widely in the field, particularly on the impact of the liberalisation of liquor licensing laws in Victoria.

**Professor Dan Lubman** has worked across mental health and drug treatment settings in the United Kingdom and Australia. He is Director of Turning Point and Professor of Addiction Studies and Services at Monash University, Melbourne. Dan's research is wide-ranging and includes investigating the impact of alcohol and drug use on brain function.

**Dr Sarah MacLean** is a sociologist with a sustained interest in conducting research that supports health and welfare policy development, particularly in relation to alcohol and other drug use. Since 2010, Sarah has been employed on an Australian Research Council postdoctoral fellowship at The University of Melbourne, located at the Centre for Alcohol Policy Research at Turning Point.

**Dr Elizabeth Manton** is a sociologist and qualitative public health researcher with interests in the social, cultural and historical influences on alcohol policy development, and on preventable lifestyle behaviours, such as drinking alcohol. She is a Research Fellow at the Centre for Alcohol Policy Research at Turning Point and an Adjunct Research Fellow at Monash University.

**Florentine Martino** undertook her degree as a Master in Public Health and Nutrition in Amsterdam and is currently undertaking a PhD at Deakin University, investigating regulatory frameworks around alcohol marketing in Australia. Her other areas of interests are vested interests and corporate social responsibility in public health, especially in alcohol and obesity research.

**Rebecca Mathews** has degrees in Psychology and Public Health and is currently studying Medicine. She has worked on alcohol and drug research and policy since 2009. Rebecca has published research in the areas of epidemiology, genetic research about alcohol dependence, and ethical issues related to addiction.

**Emma McFarlane** has a background in criminology. She has worked on several research projects examining security and the reduction of alcohol-related violence in Geelong and Newcastle night-time economies, and on a project funded by the Criminology Research Council to examine the use of ID scanners in the Geelong nightclub precinct.

**Associate Professor Peter Miller** is a Principal Research Fellow at Deakin University and is the Commissioning Editor of the journal *Addiction*. He completed three major studies into drinking, violence and nightlife in nine Australian cities over five years, and was winner of the Excellence in Research Award presented at the 2013 National Drug and Alcohol Awards.

**Roger Nicholas** is a Senior Project Manager at the National Centre for Education and Training on Addiction, where he is involved in a number of national projects. Roger has 25 years' experience in the alcohol and drug field in clinical, education and policy roles across health, education and law enforcement organisations.

**Paula O'Brien** (BA/LLB(Hons)(Melb), LL.M(Cantab)) is a lawyer and Senior Lecturer at Melbourne Law School. She researches in public health law and is completing her doctoral research on the legal regulation of alcohol in Australia.

**Dr Darren Palmer** has been researching and publishing on the implementation of ID scanners and on alcohol-related violence in entertainment areas and private parties. His most recent book is *Global environment of policing* (with Michael Berlin and Dilip Das, CRC Press, 2012) and he has two forthcoming books, *Democratic policing and Global justice* (with Ian Warren).

**Dr Amy Pennay** is a Senior Research Fellow at the Centre for Alcohol Policy Research at Turning Point. She has a Bachelor of Arts (Hons) with a major in criminology and a PhD in Health Sciences. Her research interests include social, cultural, economic and political influences on alcohol and drug use and policy.

**Dr Brendan Quinn** has worked in the field of drug and alcohol epidemiology for nearly a decade, including roles with the Australian Drug Foundation and the United Nations Office on Drugs and Crime. Key research interests relate to psychostimulant use and justice health. He is currently based at the Burnet Institute in Melbourne.

**Professor Ann M Roche** is Professor and Director of the National Centre for Education and Training on Addiction (NCETA) at Flinders University, South Australia. She has more than 30 years' experience as a researcher, educator and policy analyst, and as a consultant for government and non-government bodies including the World Health Organization.

**Professor Robin Room**, a sociologist who previously directed research groups in the United States, Canada and Sweden, is a Professor at The University of Melbourne and directs the Centre for Alcohol Policy Research at Turning Point. He studies alcohol, drugs and gambling behaviour and problems, social responses to the problems, and the effects of policy changes.

**Amy Sawyer** has a Bachelor in Business, with a major in Marketing, and a Bachelor of Social Science. Amy worked in marketing for five years before changing careers and working in health promotion in 2009. Since then, she has worked on alcohol risk prevention projects and smoking cessation programs.

**Kristen Smith** is a medical anthropology PhD candidate at the Centre for Health and Society at The University of Melbourne and is currently working on a number of research projects related to Alcohol Management Plans in Australia. Kristen is a former Endeavour Research Fellow.

**Tania Steenson** has been employed as a project officer at the NCETA for seven years. Through her research, Tania has knowledge of the dynamics between legislation, compliance and enforcement in the liquor licensing setting.

**Jennifer Tindall** has a Master of Medical Science (Health Promotion) and has worked in health promotion for 15 years, focusing on measuring and addressing alcohol-related harm. For the past five years, she has worked as a Program Manager managing projects such as the evaluation of Good Sports and DANTE.

**Michael Thorn** is the Chief Executive of the Foundation for Alcohol Research and Education. He has experience in strategic policy development in government and not-for-profit sectors. He has worked in public health, social policy, crime and justice, and Indigenous affairs. He was previously an Assistant Secretary at the Department of the Prime Minister and Cabinet.

**Professor Stephen Tomsen** is Professor of Criminology at the University of Western Sydney. He conducts research and publishes on violent crime, alcohol and drug use, masculinities and social order.

**Allan Trifonoff** is Deputy Director (Programs) at NCETA, having worked in the alcohol and other drugs field for more than 20 years. Allan has worked in the health and law enforcement sectors and has developed, implemented and managed major projects involving multiple partners.

**Phillip Wadds** is a Project Manager at the Institute for Culture and Society, University of Western Sydney, where he recently completed his PhD. He is interested in the regulation and policing of Sydney nightlife and the role that both public and private policing agencies play in this complex and highly politicised environment.

**Professor John Wiggers** is a population health researcher and practitioner with extensive experience in research, research translation and policy development relating to the prevention of tobacco and alcohol-related harms and obesity. His research centres on the conduct of trials of harm reduction interventions implemented in a variety of clinical and community settings.

**Alex Wijsmuller** is a PhD research student at the University of Hertfordshire, United Kingdom. She has a Master in Criminology with Forensic Psychology and a Bachelor of Arts (Hons) in Social Science. Her research interests include the influence of the media and technology on drug and alcohol use and legislation.

**Claire Wilkinson** is a Research Fellow at the Centre for Alcohol Policy Research and a PhD student at the Melbourne School of Population and Global Health at The University of Melbourne. Claire is writing a thesis on the role, responsibility and experiences of Victorian local governments in minimising harm caused by alcohol.

**Associate Professor Grazyna Zajdow** is Associate Professor in Sociology at Deakin University, Melbourne. Her research has included work on women married to alcoholic men, the experience of drug and alcohol addiction, and alcohol regulation in Australia. She has published monographs and refereed journal articles and book chapters on these topics.

**Dr Alison Ziller** is a social planner specialising in issues of equity and social impact. She is the author of *The new social impact assessment handbook* (Australia Street Company, 2012) and currently teaches Social Impact Assessment at Macquarie University and Social Planning at the University of New South Wales, Sydney.



# Index

- Aboriginal and Torres Strait Islander people, see Indigenous communities
- ACAT, see Liquor licensing administrative or regulatory bodies
- ACT Civil and Administrative Tribunal (ACAT), see Liquor licensing administrative or regulatory bodies
- Alcohol Management Plans (AMP), 6, 160, 164, 167–176, 239, 240
- Alcohol-related harm index, 208, 240
- Australian Acts:
- Community Services Legislation Amendment Act 2002* (Qld), 169
  - Environmental Planning and Assessment Act 1979* (NSW), 47, 63, 64
  - Liquor Act* (NT), 9, 12, 32, 41, 117, 158, 168, 170
  - Liquor Act 1982* (NSW), 197, 198
  - Liquor Act 1992* (Qld), 9, 12, 21, 32, 34, 41, 62, 117
  - Liquor Act 2007* (NSW), 9, 12, 24, 32, 41, 48, 51, 52, 56, 57, 62, 75, 116, 129, 137, 138, 142, 158
  - Liquor Act 2010* (ACT), 9, 12, 24, 41, 117, 149, 150
  - Liquor Amendment (Small Bars) Act 2013* (NSW), 53, 62
  - Liquor Control Act 1987* (Vic.), 38, 162
  - Liquor Control Act 1988* (WA), 9, 12, 24, 32, 35, 41, 99, 101, 106, 117
  - Liquor Control Reform Act 1998* (Vic.), 9, 12, 21, 24, 26, 36, 39, 116, 158, 189, 225, 227, 228, 230, 231
  - Liquor Licensing Act 1990* (Tas.), 9, 117, 129
  - Liquor Licensing Act 1997* (SA), 9, 26, 33, 41, 74, 116, 129
  - Local Government (Aboriginal Lands) Amendment Act 1995*, 168
  - Northern Territory National Emergency Response Act 2007* (Cth), 169, 173
  - Planning and Environment Amendment (General) Act 2013* (Vic.), 63
  - Security and Related Activities (Control) Act 1996* (WA), 99, 101, 106
  - Stronger Futures in the Northern Territory Act 2012* (Cth), 169
  - Sustainable Planning Act 2009* (Qld), 63
- Banning orders, 22, 24, 79, 158, 184, 186
- Barring orders, 22, 24, 35, 102, 184, 186
- Beer, 80, 139, 141, 142, 183
- Bottle shops, see Off-premises outlets
- Bouncers, see Crowd controllers
- Civilian licensing inspectors, see Liquor licensing stakeholders
- Closed circuit television (CCTV), 22, 24, 49–51, 68, 76, 92, 101, 102, 131, 158
- Closing hours, see Trading hours
- Commercial interests, see Liquor licensing stakeholders
- Community groups, see Liquor licensing stakeholders
- Community impact statement (CIS), 21, 22, 27, 57–59, 62, 66, 67
- Complaints about alcohol advertising and promotions, 144
- Complaints against licensees or premises, 13, 31–33, 35–37, 47, 49, 51–53, 55, 59, 100, 104, 170, 185, 197, 227, 236
- Councils, see Liquor licensing stakeholders
- Crowd controllers, 6, 22, 24, 89, 99–104, 103, 104, 106, 111, 196
- Cumulative impact assessment, 63, 83
- Customers, see Liquor licensing stakeholders
- Data, need for improved collection, 63, 64, 69, 71, 82, 83, 115, 151, 155, 160, 161, 172, 183, 184, 199, 211, 225–227, 229, 231, 240, 241
- Department of Racing, Gaming and Liquor, see Liquor licensing administrative or regulatory bodies

- Door staff, see Crowd controllers
- Energy drinks, 211, 212, 216–222
- Enforcement, 4–7, 12, 15, 68, 103, 105, 110–112, 114, 115, 129, 145, 159, 162–164, 168, 170, 172, 177, 179–182, 184, 188–193, 199, 221, 222, 224–231, 238, 241
- Entertainment districts or precincts, 6, 22, 71, 76, 77, 79, 80, 99, 101, 102, 104, 105, 109, 112, 128, 149, 152, 159, 162, 196, 197, 199–201, 208, 211–223, 225, 239, 240
- Entry to licensed premises, 22, 24, 99–108, 111, 128
- Environment and Assessment Tool (EVAT), 62
- Exclusion orders, 22, 24, 184
- Harm minimisation, 4, 5, 12, 14, 20–28, 31, 33, 35–46, 50, 58, 75, 89–99, 106, 143, 150, 158, 167, 170, 180, 226–229, 236–241
- ID scanners, 103, 105, 197, 202, 203, 206, 207
- ILGA, see Liquor licensing administrative or regulatory bodies
- Independent Liquor and Gaming Authority (NSW), see Liquor licensing administrative or regulatory bodies
- Indigenous communities, 6, 25, 43, 126, 167, 169, 173, 239, 240
- Industry, see Liquor licensing stakeholders
- Intoxication, defining and identifying, 95, 99, 102–108, 109–121, 182, 204, 205, 220, 236
- Late hour entry declarations, 25, 225
- Licences Reduction Board, see Liquor licensing administrative or regulatory bodies
- Licensees, see Liquor licensing stakeholders
- Licensing authorities, see Liquor licensing administrative or regulatory bodies
- Licensing Board, see Liquor licensing administrative or regulatory bodies
- Licensing Commission, see Liquor licensing administrative or regulatory bodies
- Liquor accords, 6, 22, 24, 68, 115, 129, 130, 158–166, 167–170, 197, 239
- Liquor Commission, see Liquor licensing administrative or regulatory bodies
- Liquor licensing administrative or regulatory bodies:
- Australian Capital Territory—ACAT, 13, 32
  - New South Wales—ILGA, 13, 32, 35–36, 48, 50, 51, 52, 57, 58, 60, 66, 67
  - New South Wales—OLGR, 11, 13, 50, 52, 58, 60, 66, 139, 143
  - Northern Territory—Licensing Commission, 11, 13, 170, 173
  - Northern Territory—Liquor Commission, 168
  - Queensland—OLGR, 13, 34
  - Queensland—QCAT, 13, 32, 34
  - Queensland—QCCT, 34
  - South Australia—South Australian Licensing Commission, 33–34
  - Tasmania—Licensing Board, 13
  - Victoria—Licences Reduction Board (historical), 4, 77
  - Victoria—Liquor Licensing Commission, 162
  - Victoria—VCAT, 31, 32, 36, 40, 43, 189, 236
  - Victoria—VCGLR, 13, 36, 126, 164, 188, 191, 193, 224, 226–231
  - Western Australia—Department of Racing, Gaming and Liquor, 11, 13, 35
  - Western Australia—Liquor Commission, 13, 32, 35
- Liquor Licensing Commission, see Liquor licensing administrative or regulatory bodies
- Liquor licensing Acts, objects and objectives, 4, 5, 12, 14, 15, 20–28, 37, 38–46, 51, 52, 56, 57, 62, 99, 227, 228, 236, 240, 241
- Liquor licensing stakeholders:
- Civilian licensing inspectors, 110, 188–195, 238
  - Commercial interests, 4, 5, 52, 56, 57, 60, 123, 158, 179, 180, 228
  - Community groups, community-based organisations, 33, 47–54, 55–61, 115, 171, 184
  - Community Defenders' Office, 60, 237
  - Councils or councillors or council officers, see also Local government, 33, 36, 47–53, 58, 63, 64, 73, 76, 161, 207, 221, 225, 227, 228, 231
  - Customers, 12, 64, 71, 100, 111, 115, 118, 119, 138, 142, 144, 154, 207
  - Health department or authority, 37, 53, 64, 193

- Industry (including alcohol or liquor or hospitality industry), 4, 9, 14, 20, 24–27, 31, 38, 41, 48, 49, 52, 53, 56, 62, 63, 66, 71, 73, 79, 80, 100, 103, 126, 129, 137, 138, 144, 150, 159, 163, 179, 180, 181, 184, 188, 189, 190, 192, 193, 207, 225, 228, 230, 231, 237, 239
- Justice department, 13, 91, 93, 191, 224–232
- Licensees, 3, 6, 12, 24, 25, 31–37, 45, 56, 71, 90, 95, 99, 100, 109, 110, 112, 114, 115, 128, 138, 149–156, 158, 159, 162–164, 169, 179–182, 185, 188–190, 192, 193, 197, 198, 207, 228–230, 236, 238, 239
- Local government, see also Councils, 4, 6, 24, 31–37, 45, 47, 51, 57, 58, 80, 82, 83, 95, 126, 158, 162, 184, 221, 227, 237, 240, 241
- Objectors, 31–37, 47, 48, 56, 59, 241
- Planners, 63, 65, 71–77, 83, 89, 238
- Police, 6, 7, 32–37, 40, 45, 48, 49, 50–53, 57, 58, 67, 73, 75, 81, 101, 103, 104, 106, 109, 110, 112–116, 128, 143, 149, 150, 151, 152, 154–156, 158–163, 167–173, 179–186, 188–190, 192, 193, 196–198, 202, 207, 208, 221, 224–231, 237–241
- Regulators or regulatory authorities or regulatory bodies, 6, 40, 79, 130, 149, 154–156, 192, 193, 221, 230, 235
- Residents, 33–36, 48, 49, 51–53, 60, 64, 65, 72, 73, 76, 100, 104, 122, 127, 158, 161, 170, 172, 237
- Staff, 6, 12, 14, 22, 24, 50, 89, 91, 92, 94, 95, 99–104, 109–113, 115, 140, 150, 158, 163, 179, 182, 188, 198, 201, 207, 220, 228
- Local government, see Liquor licensing stakeholders
- Lockouts, 7, 74–76, 79, 102, 127, 128, 185, 186, 198, 199, 201, 206–208
- Minors, see Underage drinkers or drinking
- National Competition Policy, 4, 10, 20, 26, 31, 35, 38, 56, 62, 80, 180
- Night-time economy, 6, 14, 38, 71, 77, 99, 106, 114, 126, 196–210, 211, 220, 239
- Night-time entertainment districts, see Entertainment districts or precincts
- Objections to liquor licence applications, 31–36, 40, 48, 50, 51, 55, 58, 80, 82, 180, 228, 236
- Objectors, see Liquor licensing stakeholders
- Off-premises outlets, 5, 6, 26, 36, 38, 40–44, 51, 53, 62, 63, 67, 71, 74, 79–86, 123, 124–126, 128–130, 132, 133, 137–143, 145, 183, 206, 208, 220–224, 237, 239
- OLGR, see Liquor licensing administrative or regulatory bodies
- Office of Liquor and Gaming Regulation (Queensland), see liquor licensing administrative or regulatory bodies
- Office of Liquor, Gaming and Racing (NSW), see Liquor licensing administrative or regulatory bodies
- Opening hours, see Trading hours
- Packaged alcohol or liquor outlets, see Off-premises outlets
- Planners, see Liquor licensing stakeholders
- Planning, public realm design, 76
- Planning, licensed venue design, 89–98, 225, 238
- Planning process, 4–7, 12, 47–54, 56, 57, 62–65, 71–78, 80–83, 94, 95, 104, 184, 225, 227–229, 231, 237–239
- Police, see Liquor licensing stakeholders
- Point of sale alcohol promotions, 6, 137–148, 221, 239
- Pre-drinking or pre-loading, 67, 80, 112, 115, 143, 154, 155, 206, 208, 215–217, 220, 221, 239
- Prohibition orders, 22, 24
- Public interest assessment (PIA), 21, 22, 27, 35, 62, 82
- QCAT, see Liquor licensing administrative or regulatory bodies
- QCCT, see Liquor licensing administrative or regulatory bodies
- Queensland Civil and Administrative Tribunal, see Liquor licensing administrative or regulatory bodies
- Queensland Commercial and Consumer Tribunal, see Liquor licensing administrative or regulatory bodies
- Ready to drink (RTD), 139–142, 198, 206, 207

- Regulators, see Liquor licensing stakeholders
- Residents, see Liquor licensing stakeholders
- Responsible service of alcohol (RSA), 49, 68, 73, 79, 99, 100, 109–115, 149, 155, 158, 160, 162, 169, 190, 191, 193, 198, 207, 208, 221, 236
- Risk-based licensing, 6, 14, 39, 44, 75, 79, 80, 82, 149–157, 185, 186, 197, 202, 226, 240
- Sale, supply, promotion and consumption of liquor, attitudes and practices; see Point of sale alcohol promotions, 10, 21, 22, 24, 39, 41, 45, 49, 51, 53, 56, 72, 80, 99, 100, 101, 116, 149, 168, 170, 183, 186, 190, 193, 196, 198, 201, 221, 222, 225, 235, 239
- Social impact assessment (SIA), 52, 62–70, 83, 238
- Spirits, 3, 74, 106, 128, 141, 206
- Staff, see Liquor licensing stakeholders
- States and territories:
- Australian Capital Territory, 6, 9, 11, 13, 21, 23, 24, 32, 33, 41, 44, 75, 109, 117, 118, 124, 129–133, 149–157, 240
  - New South Wales, 5, 7, 9–11, 13, 21, 22, 24, 26, 27, 32, 33, 35, 36, 41, 47–54, 51, 52, 55–61, 62–70, 72, 73–75, 79, 80, 82, 89, 109, 111, 112, 114, 116, 118, 122, 124, 126–133, 137, 139, 140, 142, 143, 145, 158–160, 164, 197, 198, 212–219, 237–240
  - Northern Territory, 9, 11, 13, 21, 23, 32, 33, 41, 110, 117, 119, 124, 127, 130–133, 158, 164, 167–174
  - Queensland, 9, 11, 13, 21, 22, 24, 26, 27, 32, 34, 41, 44, 62, 63, 75, 79, 110, 117, 118, 124, 127–133, 150, 158–160, 164, 167, 169, 170, 172
  - South Australia, 9–11, 13, 21, 23, 25, 26, 32–34, 41, 74, 109, 110, 116, 118, 122, 124, 128–133, 159, 161, 164
  - Tasmania, 9–11, 13, 20, 21, 23, 24, 32, 38, 110, 117, 119, 122, 124, 127, 129, 130–133
  - Victoria, 4–7, 9–11, 13, 21, 22, 24, 26, 31–33, 36, 38–46, 63, 72–74, 76, 77, 79–82, 91, 93, 109, 110, 112, 116, 118, 122, 124, 126, 128, 130–133, 150, 158, 159–162, 164, 188–193, 196–198, 202, 211–220, 224–232, 236, 238
  - Western Australia, 9–11, 13, 21, 23, 24, 26, 27, 31–33, 35, 37, 41, 42, 62, 81, 82, 89, 99–108, 110–112, 117, 119, 124, 127–133, 141–143, 158, 159, 164, 167, 212–219, 222, 236, 239, 241
- Trading hours, 4, 6, 14, 22, 25, 36, 39–44, 48, 52, 74, 75, 79, 81, 122–136, 145, 149, 150, 154, 156, 164, 168, 179, 180, 185, 196–199, 207, 208, 221, 222, 239, 240
- Training requirements for licensees and others, 22, 24, 94, 99, 100, 103, 109–112, 115, 149, 163, 228, 231
- Underage drinkers or drinking, 22, 24–26, 31, 34–36, 39, 43, 110, 137, 160, 162, 183, 190–193, 225, 230, 236
- VCAT, see Liquor licensing administrative or regulatory bodies
- VCGLR, see Liquor licensing administrative or regulatory bodies
- Victorian Civil and Administrative Tribunal, see Liquor licensing administrative or regulatory bodies
- Victorian Commission for Gambling and Liquor Regulation, see Liquor licensing administrative or regulatory bodies
- Wine, 25, 49, 68, 80, 141–144







The two figures show the increase in licensed premises in the Melbourne CBD over the 20 years between 1991 and 2011. The figures were compiled by Dr Michael Livingston.

Alcohol is deeply enmeshed in Australian society, but it also causes much harm to individuals and communities.

Commercial interests and competition policies have come to dominate Australian liquor licensing laws and regulations, but how are public health and safety issues addressed by liquor legislation? With the recent and unprecedented growth in the availability of alcohol in Australia, what measures are being taken to preserve the public interest and the amenity of communities, and how can harms be minimised?

This book examines legislation on how alcohol is sold, promoted and consumed, and the implementation and enforcement of the regulations, from the perspective of reducing alcohol-related harm. It considers alcohol from a public interest perspective and brings together information applicable in every Australian state and territory.

The book also provides policy makers, public health advocates, researchers, and community groups and members with comprehensive information about the regulation of Australian alcohol markets, both historical and current trends, and the tools and interventions that have the potential to reduce alcohol-related harm.

*At a time when concern over the social and health-related impacts of alcohol continues to attract public attention, the role liquor licensing laws can play in addressing those concerns has never been clearer... Read this book to find out more about what can be done.* Professor Rob Moodie AM