



# **Review of the WA Liquor Control Act 1988**

Submission to the Department of Liquor, Gaming and  
Racing

March 2013



## About the Foundation for Alcohol Research and Education

The Foundation for Alcohol Research and Education (FARE) is an independent charitable organisation working to prevent the harmful use of alcohol in Australia. Our mission is to help Australia change the way it drinks by:

- helping communities to prevent and reduce alcohol-related harms;
- building the case for alcohol policy reform; and
- engaging Australians in conversations about our drinking culture.

Over the last ten years FARE has have invested more than \$115 million, helped 800 organisations and funded over 1,500 projects addressing the harms caused by alcohol misuse.

FARE is guided by the [World Health Organization's Global Strategy to Reduce the Harmful Use of Alcohol](#)<sup>[1]</sup> for addressing alcohol-related harms through population-based strategies, problem-directed policies, and direct interventions.

If you would like to contribute to FARE's important work, call us on (02) 6122 8600 or email [fare@fare.org.au](mailto:fare@fare.org.au). All donations to FARE over \$2 are tax deductible.

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<sup>[1]</sup> World Health Organization (2010). *Global strategy to reduce the harmful use of alcohol*. Geneva: World Health Organization.



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## Introduction

The Foundation for Alcohol Research and Education (FARE) welcomes the opportunity to provide a submission to the Review of the *Liquor Control Act 1988* (the Act). This review of the Act provides the West Australian Government with an opportunity to reform liquor licensing and prioritise evidence-based policies that will reduce alcohol-related harms.

Alcohol-related harms in West Australia (WA) are substantial and are increasing. Alcohol-related hospital admissions in WA increased from 6,876 in 2002 to 8,539 in 2006, representing an average of 4.45 per cent increase each year.<sup>1</sup> While between 1997 and 2005, there were an estimated 3,975 alcohol-attributable deaths.<sup>2</sup> The most recent data for WA show that in 2005 there were 289 alcohol-attributable deaths. There was also a 22 per cent increase in alcohol-related violence incidents in and around licensed premises recorded by WA Police between 2005-06 and 2009-10.<sup>3</sup>


The 2010 National Drug Strategy Household Survey found that 43.3 per cent of Western Australians aged 14 years and over consumed alcohol at levels that placed them at risk of an alcohol-related injury from a single occasion of drinking.<sup>4</sup> Further, 22.7 per cent of the WA population aged 14 years and over, consumed alcohol at a lifetime risk at risky levels of more than two standard drinks a day.<sup>5</sup>

The increasing alcohol-related harms and large number of Western Australians who continue to consume alcohol at risky levels demonstrates that the current regulatory and legislative framework is failing to adequately prevent alcohol-related harms experienced in WA.

Across Australia today alcohol is more affordable than it has been in over three decades; it is more available than it ever has been and it is more heavily promoted. The ways that alcohol is sold, promoted and made available contribute to the way that alcohol is consumed and the associated harms. In WA alcohol is very accessible, it can be purchased for as cheaply as \$2.85<sup>6</sup> for a bottle of wine. The number of liquor outlets in WA has increased by seven per cent over five years.<sup>7</sup> Front of house promotions in Perth alone number an average of 35.9 per store.<sup>8</sup> Given the importance of these factors in contributing to alcohol-related harms, it is important that this Review considers the price, availability and promotion of alcohol in WA.

The WA Government should use this Review as an opportunity to develop evidence-based policies with the main objective being to reduce alcohol-related harms. These policies should be based on the best available evidence and include removing reckless discounting practices by liquor licensees both on and off-licence, controlling the density of liquor outlets, reducing trading hours and removing promotions in times and places where children and young people are present.

The selective focus of the terms of reference is disappointing given the Act, has “effectively remained unchanged for ten years.<sup>9</sup>” The terms of reference (ToR) do not mention the ability of the Act has to influence the price of alcohol, nor do the ToR address off-licence liquor licenses where alcohol is sold at its cheapest. Given these omissions this submission focuses on the Object of the Act, and the importance of price, promotion and availability.



This submission addresses selected ToR of the review. The following is an outline of the Review committee's ToR and how they have addressed in the submission:

The importance of harm minimisation

- The appropriateness of the Objects of the Act

Promotion

- The advertising and marketing of liquor products

Availability

- The small bar licence as a category of hotel licence and the viability of the current restriction of 120 persons;
- The trading hours of hotels and the role of extended trading permits in this regard, with particular reference to the distinction between the services offered by hotels and nightclubs; and
- Non-metropolitan liquor stores trading on Sundays.


Other ToR

- Introducing into the Act a penalty for the secondary supply of liquor to juveniles;
- The impact of the electronic age and the rapid development of internet sales;
- The continuation of the section 38(5) restriction of three years on re-applying for a liquor licence that is refused in the public interest; and
- The definition of 'drunk'.



## Recommendations

1. That the WA Government elevates harm minimisation to a single primary Object of the Act and subordinates all other Objects.
2. That the WA Government ensures that the Objects of the Act do not contradict each other.
3. That the WA Government ensures that the Objects of the Act do not favour the alcohol industry.
4. That the WA Government renames the *Liquor Control Act 1988* to the Alcohol Control Act 2013.
5. That the WA Government amends the *Liquor Control Act 1988* to legislate for a minimum floor price for alcohol sold at both on and off-licence premises to stop reckless discounting by licensees.
6. That the WA Government continues the collection and publication of alcohol sales data in WA and include cider sales in the data collected.
7. That alcohol sales data is made publically available in a format which can be easily accessed, used and analysed by policy makers and researchers.
8. That the WA Government clarifies the thresholds of promotional discounting, activities and behaviours that are prohibited under the *Responsible promotion of liquor - consumption on premises and the sale of packaged liquor Industry Guideline* and that this Guideline continues to address both on and off-licence venues.
9. That the WA Government amends the *Liquor Control Act 1988* to provide a clear schedule of penalties applicable to licensees conducting promotional activities in breach of the provisions *Liquor Control Act 1988* relating to the promotions of liquor.
10. That the WA Government amend the *Liquor Control Act 1988* to include provisions regarding point of sale promotions that minimise minors' exposure to these promotions in and around licensed premises in public-access areas, such as restaurants with bar sections, supermarkets with liquor sections, and shopping malls with packaged liquor outlets.
11. That the WA Government establishes and enforces saturation zones in areas that are identified as already having large numbers of liquor licences, including small bar licences.
12. That the WA Government introduces cumulative impact and cluster control policies for the determination of new liquor licenses.
13. That the WA Government maintains the restriction of small bars to a maximum of 120 persons and that a Public Interest Assessment is continued to be required for small bars.

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14. That the WA Government legislates to introduce a reduction in trading hours for those licenses that are currently able to trade past 3.00am.
  15. That the introduction of reduced trading hours be independently evaluated to ascertain the social, health, crime and economic effects of these trading controls.
  16. That the WA Government introduces a risk-based licensing fee system that offsets and attributes the cost to Government and the community of administering and managing the impact of alcohol use and misuse on the community.
  17. The risk-based licensing fee system includes but is not limited to the density of outlets, trading hours, patron intoxication, crowding, staff and management practices, and venue type.
  18. That the WA Government introduces secondary supply laws into the *Liquor Control Act 1988*.
  19. That the WA Government develops a public education campaign to accompany the secondary supply laws to ensure that those who are supplying alcohol to young people understand the risks associated with young people being introduced to alcohol at an early age.
  20. That the WA Government introduces irresponsible supply laws into the *Liquor Control Act 1988*.
  21. That the WA Government introduces the 'controlled purchase operations' for alcohol into the *Liquor Control Act 1988*.
  22. That the WA Government develops regulations under section 113A of the *Liquor Control Act 1988* which includes, but is not limited to provisions relating to age identification, licence number displays, delivery requirements and the promotion and marketing of liquor products.
  23. That the WA Government amends the *Responsible promotion of liquor - consumption on premises and the sale of packaged liquor Industry Guideline* to ensure that current provisions in these Guidelines are applicable to liquor internet sales.
  24. That the WA Government ensures that section 38(5) of the *Liquor Control Act 1988* remains unchanged.
  25. That the WA Government introduce guidelines under section 3A(1)(b) of the *Liquor Control Act 1988* outlining the characteristics of a 'drunk' person to assist licensees with enforcing their responsible service of alcohol measures.
  26. That the WA Government introduces requirements for the Department of Racing Gaming and Liquor and WA Police to regularly and publically report on compliance activities relating to the *Liquor Control Act 1988*, the number of venues inspected and their location, the times of day that these venues are inspected and the number of identified breaches of compliance.



## The importance of harm minimisation

Harm minimisation should be prioritised as the single primary Object of the Act (section 5). Harm minimisation Objects are now a component of most liquor legislation in Australia. Given the extent of harms caused by alcohol, the Objects of the Act need to ensure that they do not contradict one another.

Harm minimisation is an integral component of alcohol and other drug policy. The Australian Government has defined harm minimisation as aiming to “...address alcohol and other drug issues by reducing the harmful effects of alcohol and other drugs on individuals and society. Harm minimisation considers the health, social and economic consequences of alcohol and other drugs use on both the individual and the community as a whole.”<sup>10</sup>

To ensure harm minimisation is an effective primary Object of the Act, it must not contradict the Objects that clearly favour the alcohol industry. The current Objects of the Act are not balanced. The conflict between harm minimisation and meeting industry requirements are clear challenges in reducing alcohol-related harms. The current Objects of the Act (section 5(1))are:

- (a) to regulate the sale, supply and consumption of liquor; and*
- (b) to minimise harm or ill health caused to people, or any group of people, due to the use of liquor; and*
- (c) 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.*

The current conflict within the Objects of Act present challenges for decision makers in regards to prioritising the harm minimisation Object of the Act when reviewing liquor licencing decisions. Preventing and minimising harm to the WA community should always come before the interests of the liquor, hospitality and tourism industries.

The 2004 review of the Act also considered the importance of the harm minimisation as a primary Object of the Act. However, the key amendments to the Act as a result of this review did not address the importance of harm minimisation. The main amendments to the Act were aimed at improving choice and services for WA consumers and tourists, and reducing red tape for licensees.<sup>11</sup>

The sale and distribution of alcohol regulated under the Act should not be confusing for consumers, licensees, and regulators. The name of the Act, should be amended to the Alcohol Control Act 2013, to ensure that the Act is relevant in the current environment.

All elements of the Act and how it is implemented relate to the primary Objects. Ensuring that harm minimisation is the single primary Object of the Act will help eliminate potential for contradiction of other Objects, is essential to ensure that the sale and regulation of alcohol in WA does not continue to contribute to alcohol-related harms experienced in the community.





## Recommendations

1. That the WA Government elevates harm minimisation to a single primary Object of the Act and subordinates all other Objects.
2. That the WA Government ensures that the Objects of the Act do not contradict each other.
3. That the WA Government ensures that the Objects of the Act do not favour the alcohol industry.
4. That the WA Government renames the *Liquor Control Act 1988* to the Alcohol Control Act 2013.



## Price

Evidence has consistently shown that lower alcohol prices result in increased consumption and harms. A meta-analysis of 112 international studies showed that the price of alcohol is inversely related to overall consumption of alcohol including at harmful levels.<sup>12</sup> It found that on average, a 10 per cent increase in the price of alcohol reduced consumption by five per cent.<sup>13</sup> Price affected all types of alcoholic beverage consumption across the entire spectrum of consumption and young people have been shown to be especially responsive to price.

Reiterating the significance of their findings, the authors of the meta-analysis noted that: “We know of no other preventive intervention to reduce drinking that has the numbers of studies and consistency of effects seen in the literature on alcohol taxes and prices”(page 187). While the most effective way to influence price is through alcohol taxation reform, which is regulated at the Commonwealth level, measures to limit harmful price discounting can be implemented at the state and territory level such as restrictions on discounting practices and introducing a minimum price.

### A minimum floor price can stop reckless discounting

Given the current practices by licensees to discount their products, amending the Act to prevent these discounting practices needs to be considered. Bulk buying specials are a common practice by retailers to make alcohol cheaper for consumers. First Choice liquor are currently selling a 750ml bottle of Sauvignon Blanc, with a 14 per cent alcohol content for \$2.85<sup>14</sup>. When purchased in a pack of six, this is less than 40 cents a standard drink.

To strengthen the Act and remove the ability of off-license and on-license premises to recklessly discount products the introduction of a minimum floor price is required. A minimum floor price increases the price of the cheapest alcohol products and ensures that alcohol retailers cannot sell alcohol at dangerously low prices.

Discounting practices by the alcohol industry like ‘loss leading’ are less likely to occur if a minimum floor price is introduced for products that can purchased relatively cheaply already. Loss-leading strategies are frequently used in off-licence settings, such as supermarkets, as alcohol is often heavily discounted to attract customers into their stores and purchase full priced items, a minimum floor price would counteract these types of discounting practices.<sup>15</sup> An example of loss-leading practice is leading Australian supermarkets that reportedly planned to sell beer below cost price, were planning to sell cases of beer (24 cans) for \$28, which effectively is \$1.10 per standard drink.<sup>16</sup> These supermarkets together control 50 per cent of Australia’s alcohol distribution.<sup>17</sup>

Implementation of a minimum floor price for alcohol has occurred at local levels throughout England and Northern Ireland, with the aim to reduce harmful alcohol consumption. In 2009, Oldham, an area in Greater Manchester was branded the ‘binge drinking capital of Britain’ by national media due to high rates of alcohol-related violence.<sup>18</sup> The Oldham council conducted a review of the 22 licensed bars and clubs in the town and passed a regulation in August 2009 whereby premises wishing to sell alcohol below 75 pence per unit of alcohol had to adopt a series of measures. These measures included prohibiting customers from standing near the bar and allowing customers to buy a



maximum of two drinks at a time.<sup>19</sup> Most of the bars and clubs in the town accepted the conditions. Statistics indicate that violent crime dropped from 24 incidents per month in 2008 to 18 incidents per month in 2010.<sup>20</sup>

More recently, evidence from an evaluation of minimum pricing in British Columbia in Canada clearly demonstrated the significant impact of minimum price on alcohol consumption. The results of introducing a minimum price in British Columbia showed that a 10 per cent increase in minimum price was associated with a 3.4 per cent reduction in overall consumption.<sup>21</sup>

## Recommendation

5. That the WA Government amends the *Liquor Control Act 1988* to legislate for a minimum floor price for alcohol sold at both on and off-licence premises to stop reckless discounting by licensees.


## The importance of sales data

The WA Government should be congratulated for the collection of alcohol sales data. Collection of data on alcohol consumption and harms is vital to building the evidence-base for policies that are proven to reduce alcohol-related harms. All states and territories in Australia collected alcohol sales data until 1996 when the High Court ruled that state and territory imposed liquor licensing fees and levies were excise duties and therefore illegal under the Australian Constitution. Although the ruling did not preclude the collection of wholesale alcohol sale data by liquor licensing authorities, it removed the incentive to continue to collect this data. After this High Court decision the WA Government continued to collect sales data, which is reported to the WA Drug and Alcohol Office annually.

WA is one of four jurisdictions across Australian that collects sales data. Sales data collected in WA relates to high and low strength beer, wine and also spirits. Cider sales data is not collected. Sales data is important as it provides the most accurate picture of what Australians drink, which in turn enables researchers, policy makers and the government to develop, implement and track the progress of evidence-based alcohol policies.<sup>22</sup>

The World Health Organization (WHO) recommends that to provide a more comprehensive picture of alcohol consumption, well-conducted population level surveys need to be complemented by alcohol sales data.<sup>23</sup> Alcohol consumption for WA is available through population level surveys such as the National Drug Strategy Household Survey. However, while national estimates of per capita consumption (which is primarily based on tax system data) are available, WA specific data cannot be extricated from this.

Alcohol sales data needs to be collected and reported on by every jurisdiction in order to obtain an accurate estimate of per capita consumption. Alcohol sales data is essential to monitor national levels of alcohol consumption, as well as consumption patterns associated with specific population groups and beverage choices. It is also necessary to evaluate the impact of different alcohol policies on consumption at local, state and national levels. Alcohol sales data would also contribute to more



effective alcohol policy development. For example, it would be valuable in informing alcohol tax reform to determine the beverages associated with the most harmful levels of consumption.

Further data is also required on alcohol-related harms. Data on alcohol-related harms comes from a number of sources including police data, hospital data and ambulance data. This information needs to be effectively coded and recorded to appropriately determine the impact of policies on changes in alcohol consumption and also changes in alcohol-related harms.

## Recommendations

6. That the WA Government continues the collection and publication of alcohol sales data in WA and include cider sales in the data collected.
7. That alcohol sales data is made publically available in a format which can be easily accessed, used and analysed by policy makers and researchers.



## Promotion

The following ToR is addressed in this section:

- The advertising and marketing of liquor products

Australian and international research identifies the restriction of alcohol advertising and promotions as a cost-effective policy measure to reduce alcohol related-harms.<sup>24 25 26 27 28</sup>

Most forms of advertising and promotion are self-regulated by the alcohol industry at the national level by the Alcohol Beverages Advertising Code (ABAC).<sup>29</sup> However state and territories also have a role in regulating certain promotions, such as those at the point of sale (POS), through their respective liquor control legislation. POS marketing refers to promotional materials that are found within or on the exterior of a licensed store or venue at the point where an alcohol purchase will be made (e.g. happy hours, free gifts with purchase, prominent signage, competitions, price discounts for bulk purchases, and sale prices).

### Point of sale promotions


The use of POS marketing at licensed premises is “ubiquitous” and “aggressive”.<sup>30</sup> Liquor outlets in Perth alone host an average of 35.9 POS promotions per outlet.<sup>31</sup> The prolific nature of POS marketing is concerning because it results in minors being regularly exposed to advertisements and promotions that depict alcohol consumption as a fun, social and inexpensive activity.<sup>32</sup>

Liquor promotions in WA are regulated under sections 64(3)(ga) and 64(3)(gb) of the Act, which state: “prohibit promotional activity in which drinks are offered free or at reduced prices, or limit the circumstances in which this may be done” and “prohibit any practices which encourage irresponsible drinking”, respectively.<sup>33</sup>

The *Responsible promotion of liquor - consumption on premises and the sale of packaged liquor Industry Guideline* (the Promotion Guidelines) further indicates the kinds of activities or promotions that the Director may restrict or prohibit under section 64(3)(ga) and 64(3)(gb) of the Act. The Promotion Guidelines provides information on practices that are not permitted on licensed premises or of packaged liquor. The Promotion Guidelines currently specify that licensed premises are not allowed to offer a complimentary drink on arrival, promote or sell drinks that are not a standard measure, including ‘shooters’ and ‘slammers’. Licensed premises are prohibited from advertising two-for-one or offer loyalty cards which include multiple free drinks. The Promotion Guidelines also outline provisions for packaged liquor which include prohibiting the advertisement of liquor through brand design or packaging which encourages irresponsible drinking.

The Promotion Guidelines are grossly inadequate to effectively regulate liquor and liquor promotion with a view to minimising alcohol-related harms. The Promotion Guidelines do not define what discounting activities are regarded as ‘free’ or what ‘reduced prices’ are unacceptable or prohibited.

The lack of clarity in sections 64(3)(ga) and 64(3)(gb) of the Act limits the grounds for monetary penalties under section 64(7)(b) of the Act to apply to contemporary liquor promotions. The Act and the Promotion Guidelines do not specify in detail what constitutes a ‘cheap’ or ‘discounted’ drink, or



what threshold of discount is deemed inappropriate by the licensing authority. Without such definitions and penalties the Act does not have effective provisions that regulate the harmful discounting of liquor. At present, the Act fails to provide an effective disincentive for licensees conducting inappropriate promotions on their premises.

The Act needs to be amended to clarify the level of promotional discounting, activities and behaviours that are prohibited/unacceptable under the Promotion Guidelines. These amendments to the Act need to be informed by evidence to ensure they are effective in reducing alcohol-related harms. Amending the Act to clarify what discounting and advertising activities are prohibited by licensees will strengthen the ability for authorities to enforce the provisions under the Act.

Given the lack of the clarity in the Act and the subsequent Promotion Guidelines, there is a need for clearer penalties applicable to licensed premises that conduct promotional activities in breach of the promotion guidelines on pricing.

## Recommendations

8. That the WA Government clarifies the thresholds of promotional discounting, activities and behaviours that are prohibited under the *Responsible promotion of liquor - consumption on premises and the sale of packaged liquor Industry Guideline* and that this Guideline continues to address both on and off-licence venues.
9. That the WA Government amends the *Liquor Control Act 1988* to provide a clear schedule of penalties applicable to licensees conducting promotional activities in breach of the provisions *Liquor Control Act 1988* relating to the promotions of liquor.


## Promotions and their appeal to minors

The Promotion Guidelines identify promotions that are inappropriate because they appeal to minors and or portray of young people (under 25 years). However, they do not contain provisions that aim to reduce minors' exposure to alcohol promotions on the interior and exterior of licensed premises (including both on-licence and off-licence premises). Without clarification of the penalties for licensees if they breach these guidelines, the Act cannot effectively enforce this rule.

The Promotion Guidelines state that it is not acceptable for licensees to

*Display or use promotional or branding material in promoting and advertising alcoholic drinks that by virtue of the design or packaging have a strong appeal to children or adolescents (e.g. naming of the product and/or design is using cartoon-like colouring and images, alcoholic energy drinks or 'alcopops')... [Nor is it acceptable to] Display or use promotional, advertising or branding material, which contains children or adults under the age of 25.*

Minors are capable of interpreting the messages and images of alcohol advertisements in the same way as adults do.<sup>34</sup> For example, a survey of children (between 9 to 15 years of age) in WA found that 75 per cent of children and adolescents recognise the Bundaberg Rum "Bundy Bear" and correctly associate him with an alcoholic product.<sup>35</sup> Consumer studies reveal that exposing young people to



alcohol advertising increases the likelihood of them starting to consume alcohol as well as increasing consumption in those already consuming alcohol.<sup>36 37 38</sup>

There is also consistent evidence to suggest that POS promotions are likely to affect overall consumption of underage alcohol consumers, binge drinkers, and regular drinkers.<sup>39 40</sup> POS promotions involving price or volume discounts have been found to be particularly effective in encouraging the purchase of increased volumes of alcohol.<sup>41</sup> In addition, ownership of alcohol branded merchandise and promotional items among non-drinking children and adolescents predicts both early initiation to alcohol use and binge drinking.<sup>42 43</sup>

Under section 64(8) of the Act, *“The imposition, variation or cancellation of a condition, or the imposition of a monetary penalty, under this section is not to be regarded as the taking of disciplinary action for the purposes of section 96.”* Section 96 outlines the procedure for complaints to be made to the regulatory authority. Section 64 provides for penalties to be imposed on licensees that contravene liquor promotion guidelines. Such actions are not related to disciplinary action under section 96, yet section 64 provides no alternative procedures for complaints or notifications to be made to the licensing authority regarding breaches of the rules outlined in section 64. (This includes section 64(3)(ga) and 64(3)(gb) of the Act regarding liquor promotions). Further, the Department of Racing, Gaming and Liquor in WA does not provide forms to the general public wherein they may file a complaint or notification of an inappropriate liquor promotion.<sup>44</sup> Without such guidance or channels for information sharing, breaches of liquor promotions in WA will continue to be underreported and poorly enforced.

The Promotion Guidelines need to be strengthened to reduce minors’ exposure to alcohol promotions and promotional materials in public spaces. The Promotion Guidelines should state that alcohol promotions and promotional materials should not be visible on the interior or exterior of licensed premises (including both on-licence and off-licence premises) and in public areas where minors may be present (e.g. shopping malls, supermarkets, restaurants). The Act should be amended to include penalties for licensees breaching ignore guidelines, otherwise the Act cannot effectively enforce this rule or the rules concerning the appeal of promotions to minors.

## Recommendations

10. That the WA Government amend the *Liquor Control Act 1988* to include provisions regarding point of sale promotions that minimise minors’ exposure to these promotions in and around licensed premises in public-access areas, such as restaurants with bar sections, supermarkets with liquor sections, and shopping malls with packaged liquor outlets.



## Availability

The following terms of reference have been addressed in this section:

- The small bar licence as a category of hotel licence and the viability of the current restriction of 120 persons

Research has consistently showed an association between alcohol outlet density and negative alcohol-related outcomes.<sup>45 46</sup> Increased availability, both through the increased concentration of licensed premises and longer trading hours, contributes to alcohol-related harms and violence, with both on-licence and off-licence premises contributing to these harms.

### Outlet density

Recently in WA a study was undertaken looking at the links between licensed outlets and violence. The study found that for every 10,000 additional litres of pure alcohol sold at a packaged liquor outlet, the risk of violence experienced in a residential setting increased by 26 per cent.<sup>47</sup> An analysis was also undertaken in Victoria of the effects of licensed outlet density on several measures including assault, domestic violence, chronic harms and high risk drinking in young people. The analysis found there was a strong association between reported assaults and all three outlet types, general licenses, on-licence and off-licence.<sup>48</sup> A 10 per cent increase in general licence rates in an area increased rates by 0.6 per cent, while a 10 per cent increase in off licence rates increased assault rates by 0.8 per cent.

International studies have shown that increased outlet density has also been linked to higher rates of road traffic accidents, drink driving or being a passenger of a drink driver, robbery, homicide, suicide (both attempted and completed), child maltreatment, deviant adolescent behaviours, sexual offences and sexually transmitted infections.<sup>49</sup>


In 2011-12 there were a total of 4,437 liquor licenses in Western Australia this is an increase from 4,241, in 2008-09.<sup>50</sup> This 2011-12, figure equates to approximately one licence for every 548 people in the state.<sup>51</sup>

### Policies to control the density of alcohol outlets

There are a number of policies that can be implemented to control the number of licensed outlets. Two of these policies are 'saturation zones' and 'cluster controls'. Saturation zones impose limitations on the provision of new licenses in areas where it has been identified there is high density of licenses. Cluster controls prohibit new liquor licenses for premises within a specified distance of existing licensed premises or other amenities (e.g. schools, hospitals, churches or places of religious worship).<sup>52</sup> It is important that the overall reduction in risk is the fundamental consideration when introducing policies to regulate the density of outlets.

Since 2005, local authorities in England and Wales (typically a council or borough) have been able to establish "saturation zones" within their licensing policies where no new licensed premises are permitted.<sup>53</sup> These saturation zones are determined on the basis of existing outlet density levels and





crime data including domestic violence statistics. The establishment of saturation zones and the basis for these zones is at the discretion of the individual local authority, but is not enacted in the National Licensing Act. Also, licence applicants have the right to appeal if they apply for a licence in a saturation zone and are refused.

“Cluster controls” are another policy measure that is designed to reduce alcohol-fuelled violence that results from the over-abundance of pubs and clubs. There are many examples of “cluster controls” internationally, for example in England and Wales, Paris and New York. New York has enacted “cluster controls” through their *Alcohol Beverage Control Act*. Since 1993 the legislation has included the “500 foot” (150 metres) rule which prohibits new on-premises licenses being issued within a 500 foot radius of three or more existing licenses.<sup>54</sup> The rationale for such a measure is to ameliorate the potentially negative cumulative impact of areas that have high outlet density on public health, violence and crime. Similarly in Paris under the *Code de La Sante Publique* (public health legislation), there are protected areas within which new liquor licenses are prohibited if they are within 75 metres of a licensed premise of the same category.<sup>55</sup>

Put simply, the more licensed venues there are, the more people there are consuming alcohol and the more likely there will be harm. There has been an argument for the adoption of small bars with reasons for this being that small bars “encourage innovation and a more dynamic hospitality industry”<sup>56</sup> and “offer a unique variation to traditional bars, where liquor is consumed in a responsible manner”.<sup>57</sup> However, additional small bars contribute to the number of outlets in an area. Research has shown that the number of outlets in an area contributes to the alcohol-related harms. There is also concern that such bars are being allowed where other venues would be declined – allowing for a licensed venue in an area that has been identified to have a high density of outlets.

Under the Act, a small bar is a sub category under the hotel licence. Therefore a small bar licence is subject to the same provisions as a hotel licence, as long as the licence does not include the provision of guest accommodation, the sale of packaged liquor and a restriction of a maximum of 120 people on a premise. An application for a small bar may be made if the applicant is not seeking any other kind of licence.

Currently in WA as part of the Public Interest Assessment, an applicant must provide information on existing licensed premises within 500 metres of the premises. For more complex application such as nightclub licenses outlet density information is also required as part of the Public Interest Application. These applications this includes outlet density information such as information on the location of all existing licensed premises within the locality and if they intend to sell packaged liquor. If the applicant does not intend to sell packaged liquor, the location of all existing licensed premises within 500 metres. Information is also required on nature of services provided by the other licensed premises and level of access to, and diversity of the services.

Outlet density policies need to be introduced to all licence categories, the same outlet density policy should apply to all categories. Currently different information on locality is required depending on the type of licence category application. Small bars should be subject to the same outlet density policies as all other liquor licences. Given the impacts that overall outlet density has on communities, the small bar licence within the hotel licence category should be subject to review and applications for small bar licenses should be subject to a risk-based licencing regime.



## Recommendations

11. That the WA Government establishes and enforces saturation zones in areas that are identified as already having large numbers of liquor licences, including small bar licences.
12. That the WA Government introduces cumulative impact and cluster control policies for the determination of new liquor licenses.
13. That the WA Government maintains the restriction of small bars to a maximum of 120 persons and that a Public Interest Assessment is continued to be required for small bars.

## Trading hours

The following terms of reference are addressed in this section:

- The trading hours of hotels and the role of extended trading permits in this regard, with particular reference to the distinction between the services offered by hotels and nightclubs
- Non-metropolitan liquor stores trading on Sundays


Research on the relationship between the trading hours of licensed premises and alcohol-related harm has consistently demonstrated that increased trading hours are associated with increased harms.<sup>58</sup>

### Polices to reduce the trading hours of licensed premises

Recent restrictions introduced in the New South Wales (NSW) city of Newcastle demonstrate how even modest reductions in the trading hours of licensed venues can substantially reduce alcohol-related harms. In 2008, as a result of escalating local concern about alcohol-related violence, the NSW Liquor Administration Board imposed a number of restrictions on 14 licensed premises in the City of Newcastle. The most notable of these restrictions was the imposition of a lockout from 1.00am for 14 hotels, and bringing forward closing times. Closing times were changed to 3.00am for the 11 premises that were previously licensed to trade until 5.00am and to 2:30am for the three premises that had previously been licensed to trade until 3.00am. The lock out was later moved to 1:30am and the closing time to 3:30am following a legal challenge by the licensed premises and as a result of an out-of-court agreement with NSW Police.

An evaluation carried out in the 12 months following the introduction of these restrictions in Newcastle found that there was a 37 per cent reduction in alcohol-related harms when compared to a control site.<sup>59</sup> This equates to a reduction of 33 assaults per quarter. The evaluation also found that there was no geographic displacement to the nearest late night district of Hamilton.<sup>60</sup> This reduction in harms was not only sustained, but improved. A further study three years after the restrictions were introduced found a 35 per cent reduction in night-time non-domestic assaults requiring police attention and a 50 per cent reduction in night-time street offences.<sup>61</sup>

Trading hours in WA vary depending on the licence category. Licensees can extend trading hours of premises if granted under an extended trading permit. Under section 60(4)(g) an extended trading



permit (granted for a maximum of five years) a licensee to extend the trading hours of the premise, these permits are.

Currently under a standard hotel licence the general trading hours from Monday to Saturday are from 6:00 am to midnight, and on Sundays 10:00 am to 10:00pm. While a nightclub general trading hours operate between 6 pm and 5 am the next day.

Hotel licenses permit alcohol to be sold by hotels for consumption on and off the premises, under various sub categories. These sub categories include, small bar licences, tavern licences and hotel restricted licences. Hotel restricted licences are not allowed to sell packaged liquor for consumption off licence.

A nightclub licence is permitted to sell liquor for consumption at on licence premises only, where liquor is to be sold supplementary to continuous entertainment.

The “non-metro liquor stores trading on Sunday” policy under an extended trading permit came into effect in 2009.<sup>62</sup> The National Alcohol Sales Data project 2009 report concluded that an increase in the number of outlets able to trade on Sundays signifies an increase in the availability of alcohol for consumers.<sup>63</sup> The impact of the number of outlets on a community is an important issue that must be considered when approving new licences.

Current licensees for non-metropolitan liquor stores on Sunday must apply for an extended trading permit, these permits should be subject to approval taking into account the matter of outlet density and trading hours to ensure that the Objects of the Act relating to harm minimisation is met.

Given the impact that a reduction in trading hours have on reducing alcohol-related harms, reducing trading hours should be considered for licences categorised under the Nightclub licence and other licences that have been granted an extended trading permit under section 60(4)(g) of the Act.


## Recommendations

14. That the WA Government legislates to introduce a reduction in trading hours for those licenses that are currently able to trade past 3.00am.
15. That the introduction of reduced trading hours be independently evaluated to ascertain the social, health, crime and economic effects of these trading controls.

## Risk-based licensing

The current licensing structure under the Act, includes nine different types, all of which are subject to Public Interest Assessments. The public interest assessment policy developed by the Department of Racing, Gaming and Liquor, outlines two categories for difference licence types, these include:

- i. Small bars, restaurants, clubs, producers, wholesalers, bed and breakfast facilities or work canteens; and
- ii. Complex applications, which includes hotels, nightclubs, liquor stores, taverns and some special facilities.



The criteria outlined under section 38(4) of the Act applies to both these types of categories, the difference between the two types of categories is the level of information required for a public interest application. A public interest application for a small bar and other licences under the same category requires a risk assessment in regards to harm that might be caused to people in the locality of the proposed licence, a description of the locality, location, proposed business and a description of the proposed trade and licence base.

A complex application, which includes hotels and nightclubs, requires more detail relating to harm and ill health, impact on the local area, likelihood of people to be affected by offending, annoying behavior or a disturbance or inconvenience. A complex application requires the applicant to provide evidence and justification under each of element in section 38(4). This is level of evidence this the difference between the two categories, as the first category merely requires a description while the later requires justification with supporting documents.

Risk-based licensing (RBL) fees are a structure based on a range of factors that may increase a venue's risk of facilitating harms such as increased trading hours and high occupancy levels. The rationale for the introduction of these measures is that those who cause the costs pay the costs. RBL fees can also be used to pay for late night transport options and crowd control strategies. RBL fees have been introduced in a number of jurisdictions in Australia including the Australian Capital Territory (ACT), Queensland (QLD), and Victoria, and are currently under consideration in the Northern Territory. In announcing the new risk-based licensing scheme in QLD, the Government stated that the policy "is about ensuring the industry contributes to the costs of alcohol-related harm and crime – those costs should not be a burden taxpayers have to shoulder".<sup>64</sup>

The ACT Government's rationale for introducing RBL is for liquor licensing fees to recoup the policing costs caused by alcohol-related violence in entertainment precincts, with individual venues required to pay fees commensurate with their likely risk and scope of alcohol-related harm. For example, in December 2010, the ACT introduced a model of RBL which sets liquor licensing fees for "on-premise licenses" based on premise trading hours, occupancy level, and amount of liquor purchased, each of which have been shown to correlate with levels of alcohol-related harm.

Initial analysis of the impacts on RBL fees by ACT Policing indicated that in 2011 there had been a 17 per cent reduction in alcohol-related arrests, a six per cent reduction in alcohol-fuelled assaults and a 9.67 per cent decrease in the number of people taken into custody for being intoxicated, when compared to 2010.<sup>65</sup>

A report prepared By Allen Consulting Group for the Victorian Department of Justice on the alcohol-related harm and the operation of licensed premises found that characteristics and practices of licensed premises are associated with alcohol-related harm.<sup>66</sup> A literature review found that there were five significant risk factors: operating hours, patron intoxication, crowding, staff and management practices, and venue type.<sup>67</sup>

These risk factors can be directly influenced and controlled, and should be considered as part of a risk-based licensing framework.



## Recommendations

16. That the WA Government introduces a risk-based licensing fee system that offsets and attributes the cost to Government and the community of administering and managing the impact of alcohol use and misuse on the community.
17. The risk-based licensing fee system includes but is not limited to the density of outlets, trading hours, patron intoxication, crowding, staff and management practices, and venue type.



## Other terms of reference

### Introducing into the Act a penalty for the secondary supply of liquor to juveniles

Most Australian states and territories, except for WA, SA and the ACT have introduced secondary supply laws. While these laws vary between jurisdictions, their aim is to prohibit the provision of alcohol to people under the age of 18 years by anyone other than an adult or guardian. In some jurisdictions such as QLD and Tasmania, there are also 'irresponsible supply' laws which prohibit the unsafe provision of alcohol (e.g. excessive amounts) or the inadequate supervision of the minor's alcohol consumption.<sup>68 69</sup>

The National Health and Medical Research Council's Australian Guidelines to Reduce Health Risks from Drinking Alcohol (the Guidelines), state that "for young people under 18 years of age, not drinking alcohol is the safest option".<sup>70</sup> Under-age drinking is associated with physical injury, risky sexual behaviour, adverse behavioural patterns and academic failure. Early alcohol use is also linked to later-life impacts such as problematic drinking patterns as well as a range of long-term physical and mental health conditions. Even in adult-supervised settings, early alcohol use can result in higher levels of harmful alcohol consequences.<sup>71</sup>

The prevalent and socially sanctioned act of parental alcohol supply may occur primarily due to misconceptions regarding the 'right' time and method with which to introduce alcohol to a young person. Many parents who supply alcohol to their children do so because they believe that supervised alcohol use will demystify the experience for the young person and prevent later irresponsible consumption.<sup>72</sup>

Parents are the most common source of supply of alcohol for people under 18 years of age. According to the National Drug Strategy Household Survey 2010,<sup>73</sup> for 12-15 year olds, 40.2 per cent stated that friends or acquaintances provided their usual supply of alcohol, followed by parents (30.4 per cent), relatives (9 per cent) and other (20 per cent), with 0.3 per cent normally purchasing their own alcohol. For 16-17 year olds, 52.1 per cent of their usual supply of alcohol came from friends and acquaintances, followed by parents (23.3 per cent), relatives (10.5 per cent) and other (6.7 per cent), with 7.3 per cent normally purchasing their own alcohol.

The WA Government needs to recognise the harms associated with young people and alcohol consumption and introduce secondary supply laws into the Act, to reduce the access and associated risks of alcohol at young ages. These secondary supply laws need to be accompanied by a public education campaign to ensure that those who are supplying alcohol to young people understand the risks associated with young people and the introduction to alcohol at an early age. An education campaign will also make West Australians aware that secondary supply laws exists and penalties also exists and will be enforced if people supply alcohol to minors.

Another measure to complement the introduction of secondary supply laws is 'controlled purchase operations' for alcohol. 'Controlled purchase operations' involves using minors to test licensees' willingness to sell them alcohol. This type of procedure is employed in tobacco enforcement in



Western Australian under the *Tobacco Products Control Act 2006*<sup>74</sup> and should also be legal for use in alcohol enforcement.

Changes should be made to the Act to allow ‘controlled purchase operations’ for alcohol to better enforce the provision. It can be argued that one of the reasons why young people can access alcohol is because the provisions in the Act which make it an offense to sell alcohol to minors are not enforced. By introducing controlled purchase operations – this will place greater onus on retailers to check for identification before selling alcohol to a minor.

WA Police have expressed their support for controlled purchase operations in regard to alcohol.<sup>75 76</sup> The Act can be further strengthened by allowing ‘controlled purchase operations’ by police for alcohol to better enforce the provisions regarding the sale of alcohol to minors.

## Recommendations


18. That the WA Government introduces secondary supply laws into the *Liquor Control Act 1988*.
19. That the WA Government develops a public education campaign to accompany the secondary supply laws to ensure that those who are supplying alcohol to young people understand the risks associated with young people being introduced to alcohol at an early age.
20. That the WA Government introduces irresponsible supply laws into the *Liquor Control Act 1988*.
21. That the WA Government introduces the ‘controlled purchase operations’ for alcohol into the *Liquor Control Act 1988*.

## The impact of the electronic age and the rapid development of internet sales

WA currently has no separate licence or regulations relating to liquor sales on the internet. Licensees that are authorised to sell packaged liquor can sell on the internet, however, the sale of liquor must occur on or from the licensed premise and the delivery of liquor must also be from the licensed premise. Online sales are increasing across Australia; online spending by West Australians grew 34 per cent in 2012, which was the biggest increase in the country.<sup>77</sup>

There is increasing concern about the access to alcohol via the internet. International research into whether minors can successfully purchase alcohol online found that 45 out of 100 alcohol purchase attempts were successful.<sup>78</sup> The researchers found that the age verification system for online purchasing system was not adequate in preventing the sale to alcohol to minors.<sup>79</sup>

With internet sales increasing there is a clear need for the enforcement and the regulation of these sales. Currently section 113A of the Act is the only section that covers the issue of internet and websites of licenses. Regulations pertaining to section 113A currently require the licensee to provide information on their home page which includes the type of licence, the name of the licensee, the address of and telephone number for the licensed premises.



Regulations should also require licensees to meet additional responsibilities when selling online. These regulations need to include provisions to ensure that robust age identification measures are included to ensure the responsible service of alcohol. The promotion and marketing policies outlined by the Department of Racing, Gaming and Liquor of liquor products also need to be applied to liquor internet sale regulations. Internet sales regulations also need to cover matters including but not limited to the display of licence numbers, age identification measures, guidelines for those delivering liquor which also includes age identification, and provisions relating to the marketing and promotion of liquor online.

Developing regulations pursuant to section 113A of the Act should aim to ensure that the enforcement and regulation of the responsible service of alcohol and the provision relating to marketing and promotion of alcohol products is applied to alcohol sales on the internet.

## Recommendations

22. That the WA Government develops regulations under section 113A of the *Liquor Control Act 1988* which includes, but is not limited to provisions relating to age identification, licence number displays, delivery requirements and the promotion and marketing of liquor products.
23. That the WA Government amends the *Responsible promotion of liquor - consumption on premises and the sale of packaged liquor Industry Guideline* to ensure that current provisions in these Guidelines are applicable to liquor internet sales.

## The continuation of the section 38(5) restriction of three years on re-applying for a liquor licence that is refused in the public interest

Public Interest Assessments are an important element of licensing decisions, all liquor licensing categories are subject to these assessments. The continuation of the restriction of three years should remain in the Act to ensure that harms are minimized in the community.


### Recommendation

24. That the WA Government ensures that section 38(5) of the *Liquor Control Act 1988* remains unchanged.

## The definition of drunk

According to the section 3A the Act,<sup>80</sup> a person is defined as ‘drunk’ if their “speech, balance, co-ordination or behaviour appears to be noticeably impaired” and “it is reasonable in the circumstances to believe that that impairment results from the consumption of liquor”. This definition is relatively consistent across jurisdictions, including in the most recent alcohol-related legislation: the *Australian Capital Territory Liquor Act 2010*.<sup>81</sup>





In WA the Act was amended in 2006, to strengthen the requirement for the responsible service of alcohol. These amendments were anticipated to result in well-managed licensed premises that promote the responsible consumption of alcohol, reducing alcohol-related harms. An audit of the operations under the Act on licence premises found that the Department of Racing Gaming and Liquor and WA Police do not effectively monitor or enforce the responsible service of alcohol.<sup>82</sup> The aim of this audit was to look at whether the WA Police and the Department of Racing, Gaming and Liquor were applying key provisions of the Act. The audit assessed if the agencies effectively educated licensees and staff, while also monitored the operation of licensed premises and examined whether the agencies were enforcing breaches of the Act.<sup>83</sup>

Responsible Service of Alcohol (RSA) requirements assist licensed premises to provide a safe environment. However, this does not occur if these are not appropriately enforced or policed. This enforcement cannot be left to licensed premises alone, but needs to be undertaken by Government to ensure that licensees are meeting their obligations under RSA.

The Audit found that the Department of Racing, Gaming and Liquor nor WA Police effectively monitor or enforce compliance with the responsible service of alcohol.<sup>84</sup> The reason for this failure lies in the lack of formal agreement and collaboration between the parties.<sup>85</sup>

RSA is virtually useless unless it is accompanied by rigorous enforcement. Between 2005/2006 and 2009/2010, only 161 fines were issued against licensees and their employees for the serving alcohol to a drunk person or allowing them to be on their premises. In 2009/2010, only 29 of the 4,324 licensed premises in WA were fined for irresponsible service of alcohol. In 2009, WA Police succeeded in fewer than half of prosecutions where the charge involved the irresponsible service of alcohol.

All staff who work in a licensed premises in WA are required to hold a Responsible Service of Alcohol (RSA) Certificate. RSA includes a range of responsibilities for licensees and people working in licensed venues including providing water and food to patrons, not serving alcohol to intoxicated persons and the service of alcohol in measures that reduce the risk of rapid consumption.

For RSA to be effective, it needs to be enforced and promoted. Without appropriate enforcement mechanisms, RSA measures have limited impact on the behaviour of people working in licensed venues and do not reduce alcohol-related harms.<sup>86</sup>

In order to assist the authorities to enforce the responsible service of alcohol more detail is needed under section 3A (1)(b) when describing the characteristics of a 'drunk' person. The term "noticeably impaired" should be continued to be included in the definition of 'drunk' as it gives authorities to enforce the provisions under the Act.

Guidelines under Section 3A (1)(b) should be developed to assist with the enforcement of RSA provision under the Act. The Guidelines should outline in further detail than what is currently stated in the Act.



## Recommendations

25. That the WA Government introduce guidelines under section 3A(1)(b) of the *Liquor Control Act 1988* outlining the characteristics of a 'drunk' person to assist licensees with enforcing their responsible service of alcohol measures.
26. That the WA Government introduces requirements for the Department of Racing Gaming and Liquor and WA Police to regularly and publically report on compliance activities relating to the *Liquor Control Act 1988*, the number of venues inspected and their location, the times of day that these venues are inspected and the number of identified breaches of compliance.

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