

Submission to the ACT consultation on “*Same day delivery of alcohol in Canberra*”

September 2023



About FARE

The Foundation for Alcohol Research and Education (FARE) is the leading not-for-profit organisation working towards an Australia free from alcohol harms.

We approach this through developing evidence-informed policy, enabling people-powered advocacy and delivering health promotion programs.

Working with local communities, values-aligned organisations, health professionals and researchers across the country, we strive to improve the health and wellbeing of everyone in Australia.

To learn more about us and our work visit www.fare.org.au.

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Contents

Executive summary	4
Recommendations	5
Introduction	8
Alcohol causes significant harm	8
Rapid expansion of online sale and delivery	9
Regulation of online sale and delivery	10
Online sale and delivery landscape in the ACT.....	10
ACT Human Rights Act and other ACT frameworks	12
Purpose, scope and definitions	15
Harm minimisation and community safety.....	15
Establish a licence category for online sale and delivery	15
Regulate all sales and delivery of alcohol - not just same day	17
Point of sale	19
Effective ID checks at point of sale.....	19
Protect people from predatory marketing.....	19
Delivery of the order	22
Effective ID check on delivery	22
Prevent rapid delivery	22
Support delivery staff.....	23
Records and reporting.....	24
Limit late night delivery.....	25
Compliance	26
Prohibited offences	26
Test purchasing	26
Risk-based licensing	27
Develop specific risk ratings for online delivery.....	27
Supply density and cumulative impact assessment.....	27
Community consultation	28
Public consultation for online sales and delivery.....	28
Genuine transparency and public participation.....	28
Support communities to have a genuine voice	29
Conclusion	30
References	31

Executive summary

Everyone should have the opportunity to be healthy, safe and free from the harms that alcohol causes to families and communities. At the moment, alcohol causes harm to far too many people in the ACT, contributing to chronic disease, family violence, self-harm and suicide. Alcohol harm is exacerbated by the rapid expansion of the online sale and delivery of alcohol, which has vastly increased availability and accessibility, creating unique risks to community health and safety.

The regulatory environment for the supply of alcohol in the ACT was designed for bricks-and-mortar stores, with no reference to retail alcohol delivery in the current legislation. The checks and balances that the ACT community expects to be in place to prevent and reduce harm, are significantly lacking when it comes to the online sale and delivery of alcohol. These include age verification, Responsible Service of Alcohol (RSA) and community consultation on new liquor licences.

We welcome some of the proposed measures in the ACT Government's "*Regulation of Same Day Liquor Delivery Providers – A discussion paper*".¹ These include:

- effective digital age verification and pre-authorisation for online sales of alcohol;
- requirement for ID checks (matched to order) on alcohol delivery;
- supporting delivery staff with delivery-specific training, not penalising them for non-delivery, and making delivery companies liable for non-compliance;
- collecting data on refused deliveries and volume of alcohol online sales and deliveries;
- ensuring that children and people who are intoxicated are not delivered alcohol.

We also encourage the ACT Government to introduce other measures to prevent and reduce the harm from the delivery of alcohol. These include:

- introducing a separate licence type with risk ratings for online sale and delivery;
- introducing measures to address predatory, data-driven push marketing;
- introducing a 2-hour safety pause, to prevent rapid delivery;
- limiting deliveries to between 10am and 10pm, to reduce the risks of alcohol-related family violence and suicide, which increase later at night in the home;
- extending compliance testing to ensure that regulators are able to enforce the measures that are put in place;
- establishing a risk factor for supply density;
- adopting a community-centric approach to liquor licensing public consultation, that prioritises the voices and expectations of the community.

It is critical that changes to the ACT regulatory framework for the online sale and delivery of alcohol prioritise a health and human rights approach to the prevention of alcohol harm. This approach must acknowledge the significant gaps in the regulation of alcohol that exist in the current legislative framework. Regulatory changes for online sales and delivery should also aim to be relevant now and into the future. This is important in an area where alcohol supply has changed so significantly and legislation has not kept pace with these changes.

FARE welcomes the ACT Government's commitment to review the regulation of the online sale and delivery of alcohol. FARE thanks the ACT Government for the opportunity to make this submission on the "*Regulation of Same Day Liquor Delivery Providers – A discussion paper*".

Recommendations

FARE recommends:

Human rights

Recommendation 1. In developing legislative changes, consider the *ACT Human Rights Act 2004* and how the increased accessibility to alcohol through the delivery of alcohol impacts on the rights of families and children.

Purpose, scope and definitions

Recommendation 2. Prioritise harm minimisation in legislative measures, above other considerations, as a principal object of the *ACT Liquor Act*.

Recommendation 3. Amend the *ACT Liquor Act*, Sections 16 to 21, to establish a separate, specific liquor licence category for online alcohol sales and delivery. This is to align the administration, licence fees and conditions with the risk of alcohol harm associated with online alcohol sales and delivery. Require retailers, such as bottle shops and third-party delivery companies, to have and display this license to sell alcohol online or to deliver alcohol.

Recommendation 4. Amend the *ACT Liquor Act Dictionary* to define all commercial entities involved in the online sale or delivery of alcohol, as being subject to the harm reduction measures in the Act.

Point of sale

Recommendation 5. FARE supports the proposal to amend the *ACT Liquor Act*, Section 110, and the *ACT Liquor Regulations Section 34*, to require proof of age / identification details at the point of alcohol purchase online.

Recommendation 6. Amend the *ACT Liquor Regulations Section 29* to require alcohol companies with online advertising, to clearly display on their websites at least three prescribed rotating health warning statements about the risk of harm from alcohol, with a link to the Australian guidelines to reduce health risks from drinking alcohol.

Recommendation 7. Amend the *ACT Liquor Regulations Section 29*, and the *Responsible Promotion of Liquor Guidelines*, to prohibit direct links from advertisements to alcohol retail, such as ‘buy now’ buttons and push notifications. This is to prevent predatory marketing by alcohol companies that promotes excessive and rapid alcohol use.

Recommendation 8. Amend the *Responsible Promotion of Liquor Guidelines* to also apply to digital marketing, online sales, delivery and takeaway. Expand the *Responsible Promotion of Liquor Guidelines* to capture examples directly relevant to online retail marketing. Amend the *ACT Liquor Regulations Section 29* to grant the commissioner discretion over determining which other marketing practices are also harmful in addition to the listed examples.

Recommendation 9. Help prevent data-driven predatory marketing by supporting strong privacy reforms at the Commonwealth level, such as legislating strong protections in the new *Privacy Act*. This should include a fair and reasonable test that looks at the best interests of the child – as recommended by the *Attorney-General’s Privacy Act Review*.

Delivery of the order

Recommendation 10. FARE supports the proposal to amend the *ACT Liquor Act*, Section 110, and the *ACT Liquor Regulations Section 34*, to require proof of age / identification details at the point of alcohol delivery (matching it with the sales order). This should also apply to all deliveries of alcohol, not just same day.

Recommendation 11. Amend the *ACT Liquor Act Dictionary* to define rapid alcohol delivery as the delivery of alcohol within two hours of placing an order.

Recommendation 12. Amend the *ACT Liquor Regulations* Sections 32, 33, and Schedule 2, to introduce a 2-hour safety pause between order and delivery of alcohol-only orders to stop rapid delivery of alcohol, which is found to contribute to higher risk drinking.

Recommendation 13. FARE supports the proposal to amend the *ACT Liquor Act* Sections 105, 110 and 225, to clarify that delivery companies (including bottle shops and online delivery providers), are liable for delivery breaches, such as delivery to children or people who are intoxicated.

Recommendation 14. FARE supports the proposal to amend the *ACT Liquor Act* Sections 100 and 193 to require delivery staff of alcohol companies to undergo delivery-specific Responsible Service of Alcohol (RSA) training. This is to ensure they are safe, and that they understand their role, rights and responsibilities in refusing delivery of alcohol.

Recommendation 15. FARE supports the proposal to amend the *ACT Liquor Act* Sections 31 and 131 to require alcohol companies to report delivery data such as refused deliveries, by geographic area to regulators (e.g., by Local Government Area), to enable monitoring of deliveries and frequency of compliance issues.

Recommendation 16. FARE supports the proposal to amend the *ACT Liquor Act* Sections 31, 142, and *ACT Liquor Regulations* Section 1.19, to require alcohol companies to report the volume of alcohol sold online and delivered by geographic area. This is needed for a more accurate calculation of alcohol supply density.

Recommendation 17. Amend the *ACT Liquor Act* Sections 131, 142, and *ACT Liquor Regulations* Section 1.19, to require the Commissioner to publish frequent reports on monitoring and enforcement activity including online sales data, and delivery data such as refused deliveries.

Recommendation 18. Amend the *ACT Liquor Regulations* Sections 32, 33, and Schedule 2, to limit all alcohol deliveries to between 10am and 10pm, on any day, to reduce the risks of alcohol-related family violence and suicide, which peak late at night in the home.

Compliance

Recommendation 19. FARE supports the proposal to amend the *ACT Liquor Act* Section 105 and 110, establishing specific offences for the online sale or delivery of alcohol to people under 18, and for the delivery of alcohol to an intoxicated person.

Recommendation 20. Amend the *ACT Liquor Act* Part 8 to establish a specific offence for leaving an alcohol delivery unattended.

Recommendation 21. Amend the *ACT Liquor Act* Sections 187A to 187G to expand the current program of compliance tests to online sales and delivery of alcohol. This is to test compliance of the prohibitions against delivering alcoholic products to people under 18, people who are intoxicated or deliveries being left unattended.

Risk-based licencing

Recommendation 22. Amend the *ACT Liquor Act* Section 229 to establish a risk-factor for online sales and delivery to accurately reflect the increased risk of harms.

Recommendation 23. Amend the *ACT Liquor Act* Section 229 to incorporate a risk factor for supply density, (as an equivalent for outlet density), for online sales and delivery of alcohol in a geographic area. Consult alcohol policy experts on the development, implementation and evaluation of such a risk factor.

Community consultation

Recommendation 24. Amend the *ACT Liquor Act* Sections 33 to 36, and Sections 88 to 92B, to prescribe an effective community impact process, (eg. community impact statement), for online sales and delivery, publishing full licence applications with risk-assessment management plans specific to the delivery of alcohol. This is to adopt a *community-centric* approach to liquor licensing, that prioritises the voice, expectations, needs and aspirations of the community.

Recommendation 25. Amend the *ACT Liquor Act* Sections 33 to 36 to ensure engagement with all relevant stakeholders, by providing resourcing for targeted and independent support for members of the public impacted by increases in liquor supply density. This is to ensure the consultation process is informed by relevant community expertise of alcohol harm by improving access, information and support to navigate and engage with online sales and delivery liquor license application processes.

Introduction

Alcohol causes significant harm

Alcohol causes significant harm to Australians, with one person dying every 90 minutes and one person being hospitalised every three minutes because of alcohol.² Alcohol-induced deaths are also at their highest rate in Australia in a decade.³

Nearly 100 people in the ACT die each year of alcohol-attributable disease and injury, and more than 1,500 hospitalisations in the ACT are attributable to alcohol.⁴ Over a fifth (21.3 per cent) of people in the ACT exceed single occasion alcohol risk guidelines.⁵ Alcohol is the most common drug that people in the ACT seek treatment for (44 per cent).

The latest *Harms to Others* study shows that alcoholic products also cause harm to the broader community, with 10 million Australians harmed annually. In a 2021 survey of 2,574 adults, participants were asked about the impacts of alcohol use by people they interacted with – friends, housemates, strangers, partners, family members and colleagues.⁶ Nearly half (48.1 per cent) said they had experienced harm from another person’s drinking, while 7.5 per cent reported having been “*harmed substantially*”. This equates to almost 10 million adults a year harmed by others’ alcohol use and more than 1.5 million experiencing serious harm.

Lived experience of alcohol harm

At the heart of considerations about preventing alcohol harm, are people with important experiences that need to be heard.

ACT resident Alex, shared her story with FARE:

“I’m a long-term Canberra resident. Fast service alcohol delivery contributed to the death of my close friend – he was only 43 years of age and died of alcohol-related organ failure.

These delivery services enabled and worsened his alcohol use disorder. They continued to deliver alcohol to him when he would have likely been refused service through other avenues.

There is such a risk of non-compliance with responsible alcohol service with options for quick delivery. It seems delivery companies will keep bringing alcohol to people’s doors when it might be unconscionable and harmful to do so.”

Sober in the Country founder and CEO, Shanna Whan, says:

“I can’t begin to tell you how frequently I hear from people in my community who comment that trying to cut back or quit alcohol is made exponentially more difficult by the avalanche of alcohol advertising coming at them on social media.

It’s insidious, it’s constant, and there’s no getting away from it. When these ads are linked to rapid online delivery, bringing alcohol into people’s homes in less than 30 minutes, they are even more harmful.

I personally know of a case where this caused death.

People are seeking help for alcohol dependency and then in their face is an ad saying, ‘I can bring this to your door’. For people like me who are remote and live in the middle of nowhere, our lifeline can be an internet connection.

When somebody who is fragile and seeking help types 'alcohol' into a search engine because they're looking for support, it triggers the algorithm and the next minute, their news feed is full of ads for the very things they are trying to flee from. This needs to change."

Kym Valentine, Chair of the Victim Survivors' Advisory Council (VSAC), which advises the Victorian Government on family violence policy, said:

"The crackle and squeak of car tyres pulling up. Lights piercing through the front window. The sound of footsteps coming towards the door. However innocent this description of home alcohol delivery may sound; it sends shivers down the spines of victims of domestic violence living with an alcoholic.

In the 24-hour, app-enabled economies in which we now live, alcohol can flow freely into homes at any hour after a few taps on the phone, fuelling erratic and violent outbursts in already abusive homes.

We cannot go on in the current trajectory where alcohol companies operate in a largely unregulated advertising and home delivery market. We must ask ourselves – are elevated levels of domestic abuse an acceptable trade-off for allowing alcohol companies to aggressively promote rapid booze delivery into homes late at night?

Alcohol-fuelled domestic violence is a hidden harm, yet the remedies are in clear sight. We just need strong leadership to implement them and to send the message that safe and healthy family life comes before profits. Setting basic standards for alcohol advertising and delivery will keep families safer from harm."

Rapid expansion of online sale and delivery

The rapid expansion of online sale and delivery of alcohol is making alcoholic products more accessible, increasing the risk of harms to people in ACT. The increasing online sale and delivery of alcohol is part of a broader trend towards digitisation of transactions and mobility of products in society. But alcohol is no ordinary product like groceries or books. It is a drug that requires controls on how it is sold and delivered so that communities are protected from potential harm.

Historically, these controls over alcohol have been exercised in a physical setting like a bottle shop, but online transactions and delivery have caused significant disruption. Alcohol companies can now advertise a product through multiple digital platforms, enable fast purchases via Apps or websites, and then deliver alcohol within 30 minutes in many areas. This means alcohol is more readily available and accessible than ever before.

Online alcohol retail sales have almost quadrupled from 2012 (\$539 million) to 2022 (\$2.0 billion). The revenue from online alcohol sales is forecasted to grow at an annual rate of 10.6 per cent by 2026-27.⁷ In 2020, one in 10 Australians who bought takeaway alcohol purchased it online – a threefold increase from 2019.⁸ It is estimated that one in six Australians who drink alcohol, purchased it via delivery.⁹

Research into the delivery of alcohol in Western Australia shows that alcohol is being left unattended, delivered to people under 18 years old,¹⁰ and to people who are intoxicated.¹¹ Alcohol is also being delivered into homes rapidly, which increase the risk of harm, through the extension of an existing alcohol session.¹²

Regulation of online sale and delivery

Across all Australian jurisdictions, regulation of online alcohol sale and delivery has not kept pace with the rapid changes in the ways that alcohol is sold and marketed. This has led to legislative loopholes and means the sector is not regulated to the same standard as traditional ‘bricks-and-mortar’ venues, (ie. pubs, clubs, bars and bottle-shops). For example, it is a basic expectation that children, young people under 18 years old, and people who are intoxicated, are not served alcohol, but the necessary controls are not yet in place for online sales and delivery.

Urgent and comprehensive action needed

Reform is urgently needed to address the significant and increased harms from online sales and rapid delivery of alcohol into the home. In November 2020, the NSW Government introduced reforms for online sale and delivery of alcohol. These reforms included ID-checks for point of sale and for delivery, online sales and refusals data collection, test purchasing, delivery-specific RSA training, an offence for delivery to people who are intoxicated, and drivers not being penalised for refusal.

A recent review of these reforms, (as outlined in the report ‘*Review of Alcohol Delivery Reforms - Stage 1*’)¹³ showed:

- One in ten drivers were unaware of the age and ID check requirements
- Seven of the 25 covert compliance failed to verify Point of Delivery ID
- Ten per cent of delivery drivers felt unprotected from being penalised
- Nearly one in ten who refused a delivery had been penalised by their employer
- A complaint was received about a non-same day delivery of alcohol to person under 18.

With the evidence that alcohol continues to be sold and delivered without ID checks, left unattended, and delivered to people who are intoxicated, it is clear that regulations are needed.

It is pleasing to see the ACT Government exploring these reforms. It is critical that the ACT Government implement a full suite of evidence-based regulatory measures as they interact and influence each other in preventing alcohol harm.

Online sale and delivery landscape in the ACT

In ACT, an increasing number of companies offer alcohol delivery through different platforms. The sale and delivery of alcohol is dominated by two companies; Endeavour Group (48.2 per cent of Australia’s market share) and Coles Group (11.6 per cent of market share).¹⁴ Together, they account for 60 per cent of online alcohol revenue in Australia. Endeavour Group owns Jimmy Brings, Dan Murphy’s, Shorty’s Liquor and BWS. Coles Group owns Liquorland and First Choice.

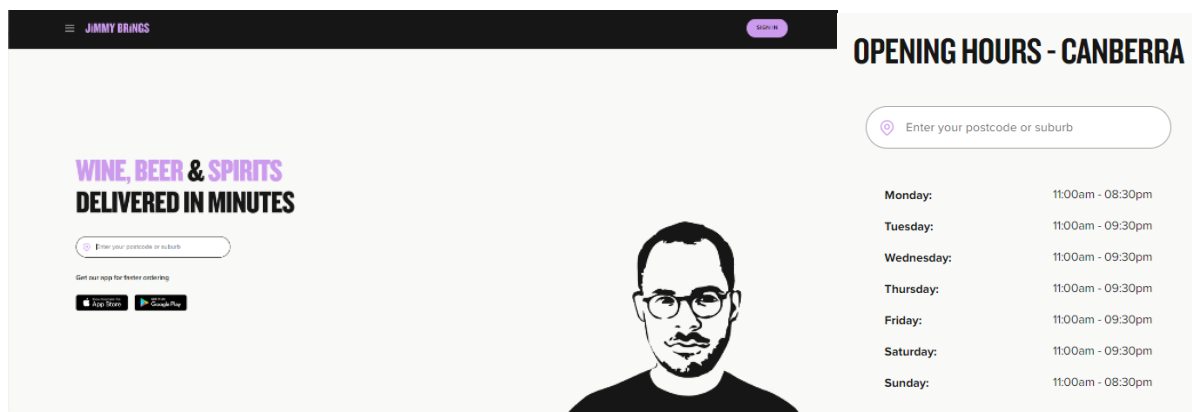
Online retail websites such as Kogan and Amazon sell alcohol with delivery options available. Companies offering limited products such as Farrah’s Liquor Collective and Canberra Wine + Spirit Merchants offer subscription-based services that enable regular delivery. Finally, airlines such as Qantas and Virgin also sell alcohol online and provide flying rewards with purchases.

Companies offering alcohol delivery in ACT (excluding bars and restaurants)

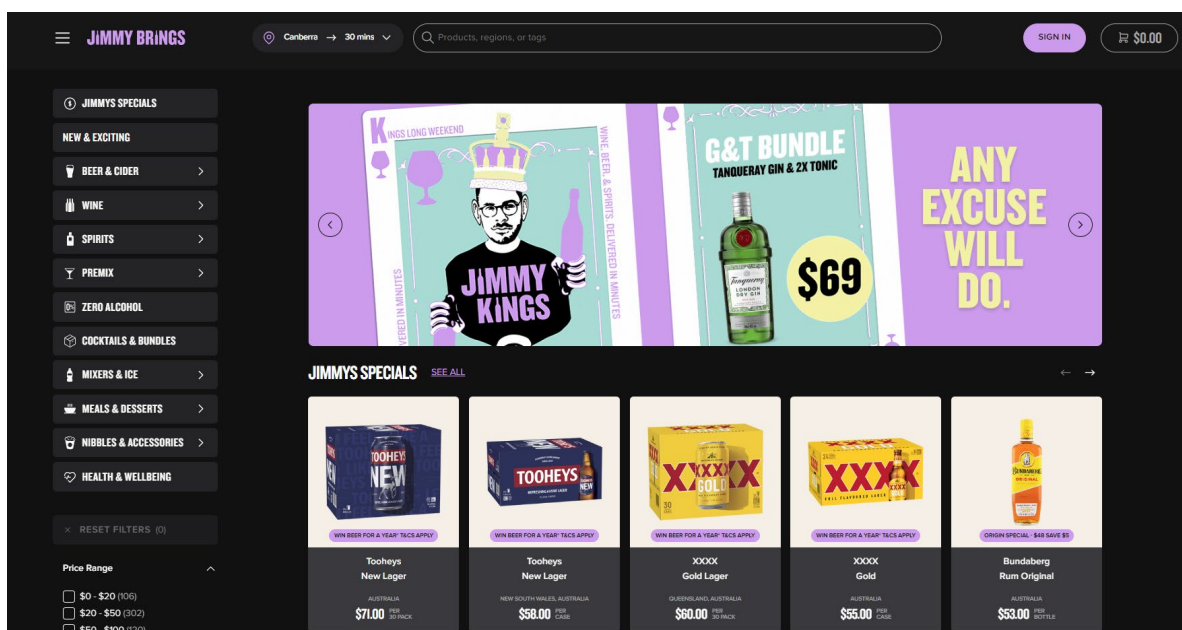
Major alcohol companies	Online retail sites that deliver alcohol	Companies with limited products	Airlines that sell alcohol
			
			

Jimmy Brings case study

Jimmy Brings¹⁵ is owned by the Endeavour Group and delivers alcohol to different parts of the ACT. The Jimmy Brings website says alcohol can be “delivered in minutes” to people’s homes. When entering the postcode for Canberra City, the website shows alcohol delivery will take 30 minutes.



The online alcohol store displayed promotional gin and tonic at a discounted prices during the King’s birthday long weekend holiday. Below the promotional banner are multiple bulk alcohol purchase options advertised at discounted prices.



In 2021, the NSW alcohol regulator investigated Jimmy Brings, who sold \$24,000 worth of alcohol to a 49-year-old man, across almost 300 orders, in the three years prior to his death.¹⁶

The Jimmy Brings online store states: *“For sales made in the ACT, the sale of liquor pursuant to the agreement to sell from this platform is made at the licensed premises as such, your contract of sale is with the relevant licensee at the relevant premises from which you order is accepted and fulfilled.”*

Alcohol orders are collected by drivers from take away bottle shops. The Jimmy Brings website explains to its delivery agents: *“Once you accept a job, you will be directed to a local BWS or Dan Murphy's Bottle Shop to collect the order and then deliver it to the customer nearby.”*

There are three different commercial entities involved in online sales and delivery of alcohol by Jimmy Brings in the ACT. The licenced takeaway bottle shop that the contract of sale is with, is not clearly identifiable by name on the Jimmy Brings website, which only lists licence numbers, not business names. Jimmy Brings is not required to hold a separate liquor licence in the ACT.

ACT Human Rights Act and other ACT frameworks

ACT Human Rights Act 2004

The ACT Human Rights Act¹⁷ helps protect people from alcohol harm in multiple ways:

- The right to public health services,
- The right to protection against discrimination on any ground (including health or disability),
- The right to protection of family and children,
- The right to workplace justice and favourable conditions of work.

The ACT Human Rights Act 2004 contains rights, which are based on international agreements about how to protect values such as freedom, respect, equity and dignity. The ACT Government, its agencies and other ACT public authorities must act and make decisions consistently with these rights. The 2019 ACT Auditor-General’s Report *‘Obligations under the Human Rights Act 2004’*,¹⁸ made a recommendation that all key ACT Government decision-making documents contain a section explicitly considering human rights.

A Queensland Government Committee recently asserted that the Queensland Human Rights Act¹⁹ requires public policy to address alcohol harm. The requirement is based on the increased risk of harm from *‘easy access to alcohol’*, (which includes online sales and delivery):

“The use of alcohol and other drugs accompanies around half of all family and domestic violence incidents. Legislative measures which increase accessibility to alcohol, and especially alcohol usage in private homes, may therefore limit the rights of children and families and the right to security and liberty of the person. HRA section 26 emphasises the importance of the family, imposes an obligation on the State to protect the interests of children. Easy access to alcohol threatens not only children and families of alcohol consumers, but also the mental and physical health and security of consumers themselves.”²⁰

This means the Queensland Government has an obligation to protect the rights of children when considering legislative changes in relation to alcohol availability.

The ACT Human Rights Act affirms a similar right under Section 11 *“Protection of the family and children”* where it states *“every child has the right to the protection needed by the child because of being a child”*. ACT legislative measures that increase accessibility to alcohol, and especially alcohol use in private homes, may therefore limit the rights of children and families, and the right to protection. This would suggest that the ACT Government also has a duty to address harm from alcohol in its public policy, and that this obligation must guide decision making throughout this reform process for online alcohol sale and delivery.

ACT Wellbeing Framework 2020

The ACT Government has developed a Wellbeing Framework to better understand the impact of its policies and proposals on the wellbeing of people, institutions and environment in the ACT. ²¹ The framework includes domains and indicators for physical and mental health, with an aspiration that: *“Canberrans have good physical and mental health at every stage of life and can access the services they need to lead healthier lives and manage illness”*.

The harm caused to mental and physical health by alcohol is outlined in the previous section. The wellbeing framework addresses broader wellbeing domains and indicators that are also impacted by the increased risk of harm from the rapidly increased access and availability of alcohol.

These include:

- **Employment** - workplace safety
- **Environment** – community health and safety
- **Governance and institutions** – industry influence on health policy
- **Housing and home** – safety and privacy
- **Safety** – family violence, protection for delivery staff.

ACT Drug Strategy Action Plan 2022-26

The aims of the ‘ACT Drug Strategy Action Plan 2022-2026’²² are to:

- *“Minimise the harms related to alcohol, tobacco and other drugs to the Canberra community*
- *improve the health and wellbeing of the Canberra community, and reduce stigma experienced by people impacted by alcohol, tobacco and other drugs.”*

The ACT Government made a commitment in Action Plan to review the regulation of online sale and delivery of alcohol. Action 14 stated *“Review relevant ACT legislation to ensure current arrangements are contributing to minimising harm from online liquor sales and delivery and explore options for further regulation”*.

ACT Preventive Health Plan 2020-2025

The ACT Government is currently consulting on the second Action Plan for the ‘Healthy Canberra - ACT Preventive Health Plan 2020–2025’, ²³ which align with the ‘ACT Wellbeing Framework’ above. The consultation draft of the ‘ACT Preventive Health Action Plan 2023-2025’²⁴ also contains the ACT

Government commitment above to “*Investigate options to address impacts of online alcohol orders and home delivery on health and wellbeing of Canberrans*”.

Implementing effective policy measures for online sales and delivery in the ACT will contribute directly to improving the health and wellbeing of people in the ACT, by contributing to the prevention of chronic disease, family violence, self-harm and suicide.

Recommendation 1. In developing legislative changes, consider the *ACT Human Rights Act 2004* and how the increased accessibility to alcohol through the delivery of alcohol impacts on the rights of families and children.

Purpose, scope and definitions

Harm minimisation and community safety

The discussion paper identifies the principles and purpose of the reforms as being:

“Informed by the harm minimisation and community safety principles set out in the Liquor Act (s10)”, and are intended to help manage risks to minors or intoxicated people using same day alcohol delivery providers to provides no other purpose for these reforms.”²⁵

The harm minimisation object, and the harm minimisation and community safety principles of the Liquor Act,²⁶ are the foundation of regulatory control of the “*sale, supply, promotion and consumption*” of alcohol. These harm minimisation and community safety protections must be prioritised.

Stigmatising language used to avoid regulation

The discussion paper uses the language of “*responsible customers*” versus “*determined customers*”, or people who might be “*tempted to drink and drive*”. This is discriminatory and stigmatising language, including of people experiencing alcohol dependency. This ‘*individual responsibility*’ myth,²⁷ is a false industry narrative that companies use to try and isolate and blame people from whom they make their greatest profits.²⁸ This language contributes to the stigma and shame that is often associated with alcohol.

Alcohol companies include the tagline ‘*drink responsibly*’ in their marketing to avoid further harm minimisation regulatory controls. This ignores the broader environmental factors that make alcohol almost impossible to ignore. It also ignores the gaps in regulation that allow alcohol companies to market alcoholic products relentlessly, without referencing the harm that they cause.

Recommendation 2. Prioritise harm minimisation in legislative measures, above other considerations, as a principal object of the *ACT Liquor Act*.

Establish a licence category for online sale and delivery

Liquor licence to deliver alcohol in the ACT

Currently, there is no licence category in the *ACT Liquor Act* directly governing online sales or delivery of alcohol. The most relevant licence category is “*off licence*”, but this is a licence authorising the licensee to sell alcohol “*at a licensed premises*” in sealed containers for consumption off the premises (ie. takeaway).

The discussion paper identifies the scope that the policy proposals are intended to apply to:

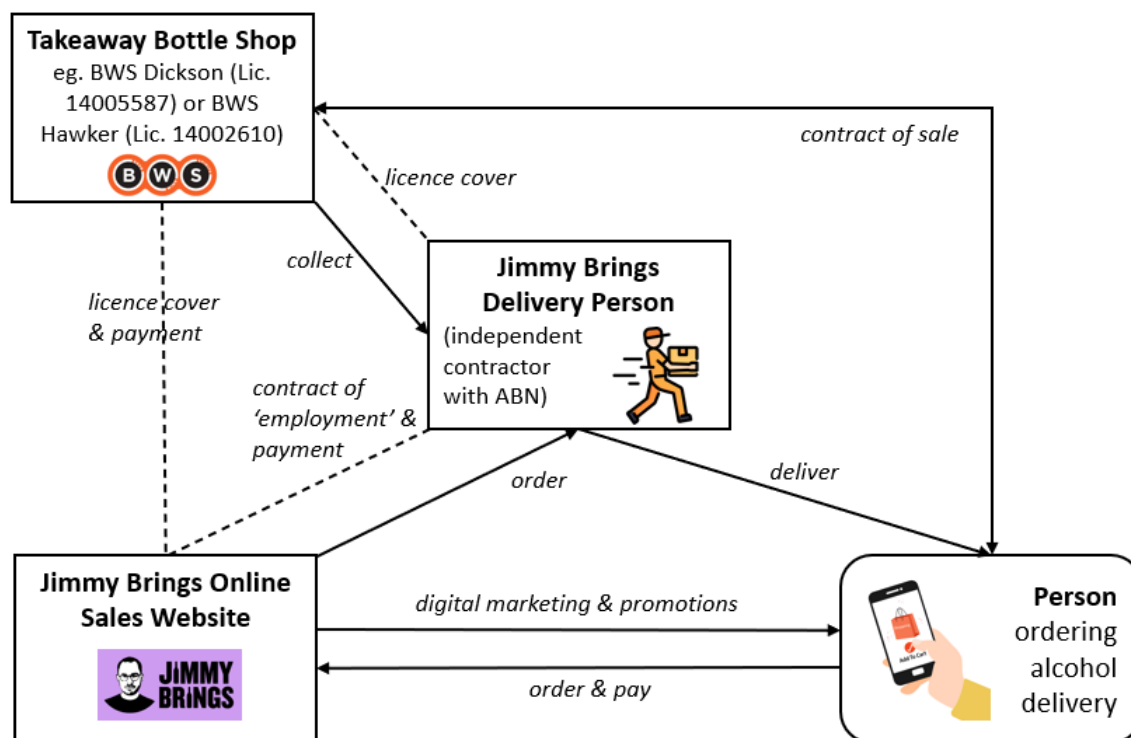
- *“Delivery businesses and platforms that deliver same day alcohol orders, whether or not their deliveries are accompanied by food;*
- *persons who offer same day alcohol delivery on crowdsourcing/task -matching platforms;*
- *any other businesses that directly deliver or arrange delivery of alcohol to the public on the same day it is ordered.”*

However, there are entities in the list which are not currently required, and will not be required, to hold a licence themselves in order to sell alcohol online or to deliver alcohol. The proposed licence ‘coverage’ will be by online sales and delivery entities being attached to a ‘*bricks-and-mortar*’ license with very different licence conditions: “*The same day delivery provider must have their own liquor licence or show that they have collected the alcohol from another licensee with a liquor licence.*”

This means that an ACT delivery provider will not need an ACT liquor licence, allowing delivery companies to continue to operate under a separate company's licence. As a result of this 'arm's length' regulatory oversight, the ACT Government will not have a clear picture of how many delivery companies are operating in the market. It also limits the ability of the ACT Government to monitor their compliance, as there are less avenues for penalising breaches (such as loss of a licence).

There can be up to three different commercial entities involved in online sales and delivery of alcohol in the ACT. These include the online sales company, the licenced takeaway bottle shop that the alcohol is collected from, and the delivery driver, (often an independent contractor).

Entities involved in online sales and delivery of alcohol in the ACT (Jimmy Brings example)



The most effective regulatory instruments are those that can directly monitor and enforce compliance with the most relevant entities involved. Any commercial entity selling or delivering alcohol should hold a liquor licence themselves.

Separate, specific licence for online sale and delivery

The discussion paper proposes a scope that specifically excludes the establishment of a separate licence type for online sale and delivery, allowing delivery providers to be covered by another licensee, with no requirement to hold a licence themselves.

Stretching existing licence conditions over fundamentally different business models will require multiple exclusions and exemptions. These include simple examples such as the requirement when applying for a liquor licence being to provide a 'plan of the physical premises'. These conditions then have to be applied to completely separate business entities to the licensee. The discussion paper identifies the scope of proposals to be limited to "existing off licences or general licences... rather than creating a new class of liquor licence". The purpose of different licence categories is to reflect different business types, and align administration processes, compliance and licensing fees with these different business types, and with the different risks of alcohol harm for each.

Establishing a separate, specific licence category for entities that deliver or sell alcohol online will more closely align administration, licence fees and conditions with the business types and risks of

associated alcohol harms. This will reduce the number of exclusions and exemptions required, and more closely target the specific entities involved. Without this process, the ACT Government has limited oversight of delivery companies and less compliance enforcement options.

An integral part of this new licence category application process would be for it to trigger community consultation (see *'Community consultation'* section below), as people in a local area where alcohol delivery is being expanded into, should be consulted. Without a specific online sale and delivery licence category, there is no process that triggers public consultation for online sale and delivery.

The Victorian Commission for Gambling and Liquor Regulation has developed such a licencing model for online sales and delivery of alcohol, by establishing the licence category of *'Remote Seller'*.²⁹ This licence category applies to entities supplying alcohol to people not currently on the licenced premise, (including sales over the phone, via the internet or through an app), and delivered to customers to use off-premises. It has its own application processes and risk-based licence fees.

Recommendation 3. Amend the *ACT Liquor Act*, Sections 16 to 21, to establish a separate, specific liquor licence category for online alcohol sales and delivery. This is to align the administration, licence fees and conditions with the risk of alcohol harm associated with online alcohol sales and delivery. Require retailers, such as bottle shops and third-party delivery companies, to have and display this license to sell alcohol online or to deliver alcohol.

Regulate all sales and delivery of alcohol - not just same day

The discussion paper suggests the proposed amendments draw heavily on the experience and legislation in place in NSW (due to the proximity of the jurisdictions). However, this seems to be limited to elements of the NSW legislation passed in 2020.³⁰ For example, adopting *"a definition for same day delivery providers modelled on that introduced under the Liquor Act 2007 (NSW)"*. It does not seem to reflect more recent reviews of the effectiveness of those laws, and falls short of what NSW is now considering.

The *"Review of the NSW Alcohol Delivery Reforms – Stage 1"*, found that despite the reforms, *"7 out of 25 covert compliance operations reported failure to verify identity"*, and *"nearly 1 in 10 drivers who refused a delivery reported having been penalised by employer."*³¹ The current Stage 2 review of NSW Alcohol Delivery Reforms is asking questions about further reforms, including:

- rapid and late-night delivery,
- non-same day reforms, and
- the impact of direct and social media marketing practices.³²

These ACT reforms must consider what has been learnt from the NSW experience, and must also ensure that ACT regulation keeps up with the rapidly changing environment of online sale and delivery of alcohol.

The *ACT Liquor Act* does not currently reference alcohol delivery. These proposed reforms which begin to regulate alcohol delivery, should not limit their scope to only one type of alcohol delivery (ie. same day delivery). A review of non-same day delivery should not be excluded from the scope of the consultation, when the risk of unattended, late night, intoxicated and underage delivery is the same for non-same day delivery.

It is necessary to identify all relevant entities involved in online sales and delivery of alcohol, as these entities are not currently specified in the *ACT Liquor Act*. The definition should cover any entity that sells online or delivers alcohol, not just those that deliver within a 24-hour period.

The *"Review of the NSW Alcohol Delivery Reforms – Stage 1"* findings indicated that a complaint had been received about a non-same day delivery to a person under 18.³³ The current *"Review of the*

*NSW Alcohol Delivery Reforms – Stage 2*³⁴ asks respondents to consider various issues related to non-same day delivery, including trends and technologies, harm minimisation strategies and direct and social media marketing.

Recommendation 4. Amend the *ACT Liquor Act* Dictionary to define all commercial entities involved in the online sale or delivery of alcohol, as being subject to the harm reduction measures in the Act.

Point of sale

Every phone in every home is now a bottle shop. In a bricks-and-mortar liquor store, the point of sale and the point of supply are combined in one transaction, with public and physical oversight. With online sales and delivery into homes these two points are separated, often undertaken by different companies, and mostly done in private. This creates two points at which there is an increased risk of a person under 18-years-old having access to alcohol.

Effective ID checks at point of sale

Currently in the ACT, it is an offence to *'supply'* liquor to a person under 18 years old, however, age restrictions are only specified for supply *at premises*. Companies that deliver alcoholic products do not effectively verify age at point of sale, putting children at greater risk.

The discussion paper proposes people be required to submit proof of age / identification at point of purchase. The required identification would include an ACT proof of identity card, passport or driver's licence, or proven accreditation under the Trusted Digital Identity Framework.

This proposal is a significant improvement on the current industry practices of a tick box to say you are over 18, or a manual date of birth entry for online point of sale. FARE supports this proposal.

Recommendation 5. FARE supports the proposal to amend the *ACT Liquor Act*, Section 110, and the *ACT Liquor Regulations* Section 34, to require proof of age / identification details at the point of alcohol purchase online.

Protect people from predatory marketing

Everyone should be able to enjoy the benefits of safely using digital technologies to work, learn, purchase and play. This can happen when we have safe digital environments that enable people's health and wellbeing. However, the extensive collection, use and disclosure of people's personal information is being used to fuel aggressive digital marketing practices that are harming the community, including the digital marketing of alcohol.³⁵

The *ACT Liquor Regulation* includes a list of prohibited promotional activities for venues. These include advertising the sale of alcohol in a way that provides incentives, or encourages irresponsible use of alcohol (including rapid or excessive use); and promoting or encouraging intoxication. However, there is no proposal in the discussion paper to extend this list to apply to online sales and delivery, or to address the digital alcohol marketing and data collection.

Online health warnings

The only current requirement regarding online advertising, is the display of a warning about the offence to supply alcohol to people under 18. Alcohol companies advertising or selling alcohol through an online platform are required under the *Responsible Promotion of Liquor Guidelines*,³⁶ to display the following information: *"IT IS AN OFFENCE TO SUPPLY ALCOHOL TO A PERSON UNDER THE AGE OF 18 YEARS PENALTIES APPLY"*. Some online alcohol companies clearly display this information. However, others do not.

Whilst these warnings about the offence of supplying alcohol to people under 18 are necessary, they are not sufficient awareness education to prevent alcohol harm for people accessing online advertising. Online alcohol companies should also be required to display evidence-based health warning with reference to the Australian guidelines to reduce health risks from drinking alcohol.³⁷ These warnings could cover the range of harms that alcohol causes including liver disease and cancer.

Recommendation 6. Amend the *ACT Liquor Regulations* Section 29 to require alcohol companies with online advertising, to clearly display on their websites at least three prescribed rotating health warning statements about the risk of harm from alcohol, with a link to the Australian guidelines to reduce health risks from drinking alcohol.

Prevent predatory digital marketing

The discussion paper notes that there are a number of “*potentially dangerous*” impacts of current online sale and delivery marketing practices, including rapid delivery that targets younger people. However, the discussion paper makes no proposals or recommendations about how to adapt the current prohibitions of promotional activities to online sale and delivery. It notes:

“The Liquor Regulations set out prohibitions for licensees and permit-holders from engaging in certain promotional activities. The Commissioner for Fair Trading issued the Responsible Promotion of Liquor Guidelines 2022 to assist with the interpretation and application of the Liquor Act in relation to liquor promotions.”

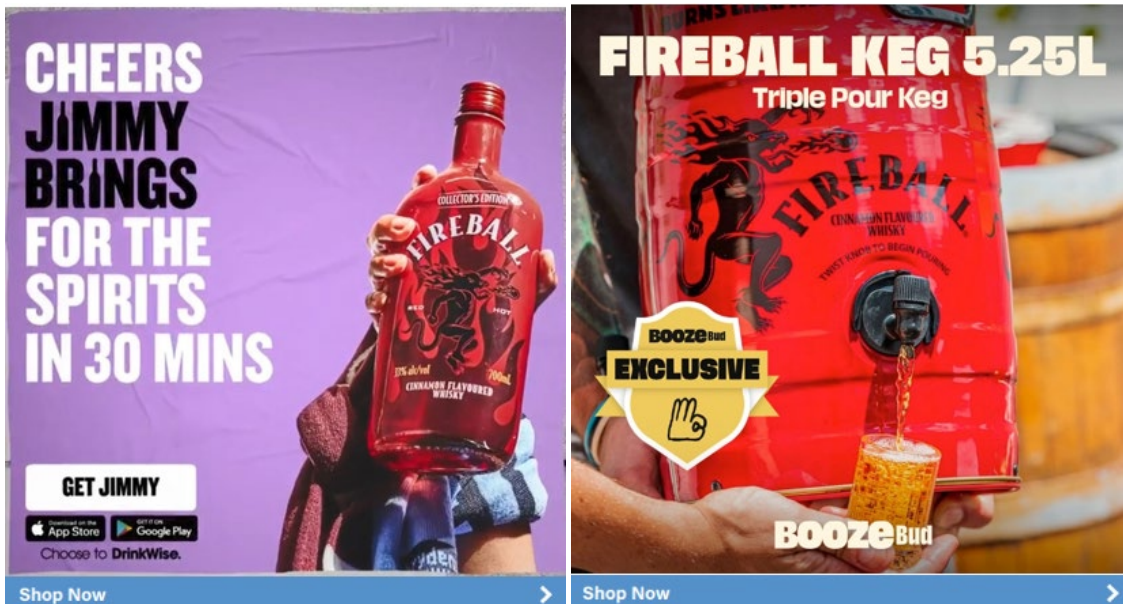
The *Responsible Promotion of Liquor Guidelines*³⁸ currently prohibits the following activities:

- a) *“Advertising sale of liquor that provides incentives, or encourages, irresponsible consumption of liquor (rapid or excessive consumption);*
- b) *promoting or encouraging intoxication;*
- c) *advertising or promoting the supply of liquor; or by associating with risk-taking or violent, dangerous behaviour; or images, symbols, designs, names or characters that have special appeal to children or young people; or encourages children and young people to consume liquor; or promoting the supply of liquor to children or young people; or consumption of liquor by children or young people.”*

Each of these above provisions needs to be made specifically applicable to the digital marketing and promotion of online sales and delivery of alcohol. This should include prohibiting specific practices such as sending direct prompts, ‘buy-now’ buttons, or notifications promoting alcohol to a person’s personal device.

An analysis of 56,579 alcohol advertisements from alcohol retailers on the Meta platforms (eg. Facebook and Instagram), over the period of October 2021 to June 2023, found that 84 per cent of advertisements had a call-to-action button. Almost half (46.7 per cent) of the advertisements by alcohol retailers on the Meta platforms with a call-to-action button directly linked to alcohol retail.³⁹ This means that the purchase of alcohol began within one click from the advertisement.

Retailers must be prohibited from offering or promoting delayed payment to purchase alcohol online or offering incentives for a minimum spend or volume. *Buy Now Pay Later* delayed payment schemes enable predatory targeting, including of people on low incomes, and people experiencing alcohol dependency. They also facilitate rapid and bulk purchases of alcoholic products. Delivery companies frequently use these promotions as a way to entice customers.



Digital marketing is data driven

The more people order alcohol, the more they will be targeted with advertising online. There is evidence that alcohol companies are uploading data about young people to feed the Meta marketing algorithm.⁴⁰ The data-driven marketing model is *harmful by design* as the whole community are targeted. People with high levels of alcohol use are likely to be targeted the most, (this would include people trying to reduce their alcohol use or in recent recovery). There is also evidence that young people are targeted with this advertising.⁴¹

The ACT Government should also support strong privacy reforms at the Federal level, that will also help prevent predatory marketing practices.

Recommendation 7. Amend the *ACT Liquor Regulations* Section 29, and the *Responsible Promotion of Liquor Guidelines*, to prohibit direct links from advertisements to alcohol retail, such as ‘buy now’ buttons and push notifications. This is to prevent predatory marketing by alcohol companies that promotes excessive and rapid alcohol use.

Recommendation 8. Amend the *Responsible Promotion of Liquor Guidelines* to also apply to digital marketing, online sales, delivery and takeaway. Expand the *Responsible Promotion of Liquor Guidelines* to capture examples directly relevant to online retail marketing. Amend the *ACT Liquor Regulations* Section 29 to grant the commissioner discretion over determining which other marketing practices are also harmful in addition to the listed examples.

Recommendation 9. Help prevent data-driven predatory marketing by supporting strong privacy reforms at the Commonwealth level, such as legislating strong protections in the new *Privacy Act*. This should include a fair and reasonable test that looks at the best interests of the child – as recommended by the *Attorney-General’s Privacy Act Review*.

Delivery of the order

Effective ID check on delivery

Currently in the ACT, there is no specified offence for *delivering* alcohol to people under 18. ID checks are associated only with premises. Delivery of alcoholic products without age verification creates a risk that alcoholic products will be left unattended or accessed by a child. There is recent evidence that this continues to occur:

- A 2022 study found that 22 per cent of people had their delivery left unattended at the door, and 50 per cent did not have to show ID to prove they were over 18.⁴²
- Another 2022 study, using research assistants who were over 18 years but appeared to look younger, found 24 per cent of alcohol orders were delivered without an ID check.⁴³
- The findings of the 2022 NSW “*Review of the Alcohol Delivery Reforms - Stage 1*” indicated that 1 in 10 drivers were unaware of age and ID checks, and 7 out of 25 covert compliance checks failed to verify point of delivery ID.⁴⁴
- A 2020 analysis of the 65 most visited online alcohol retailers in Australia found most (75 per cent) advertise a willingness to leave alcohol unattended at an address.⁴⁵

If the purchaser is not at home to receive the delivery, there are options other than leaving it unattended. Alternative delivery arrangements, such as collection at a post office or other delivery collection points are used by a number of delivery companies that ship less dangerous products (such as event tickets and mobile phones) and should apply to the delivery of alcoholic products.

The discussion paper proposes requiring showing ID (matched to order), not leaving alcohol unattended, and not delivering to people under 18 or intoxicated, for same day deliveries. These proposals are welcomed. However, effective age verification must be applied to all deliveries, not just same-day deliveries.

Recommendation 10. FARE supports the proposal to amend the *ACT Liquor Act*, Section 110, and the *ACT Liquor Regulations* Section 34, to require proof of age / identification details at the point of alcohol delivery (matching it with the sales order). This should also apply to all deliveries of alcohol, not just same day.

Prevent rapid delivery

Currently in the ACT, there are no specific requirements for *delivery* times or any pause between sale and delivery. Rapid delivery means alcohol that is delivered within 2 hours of ordering. Orders are often fulfilled very quickly (within 30 minutes), including through the use of refrigerated vans, which are essentially mobile packaged liquor outlets stocked with common items. Alcohol is often delivered cold and ready to drink.

The term ‘*rapid delivery*’ needs to be more clearly defined. The discussion paper often uses the term to mean ‘*same day delivery*’:

- “*Australian jurisdictions including NSW and Victoria have introduced specific legislation to regulate online sales that provide rapid alcohol delivery*” (p. 3)
- “*Such packaged deliveries can be distinguished from same day deliveries as they are not available for rapid delivery.*” (p. 4)
- “*Rapid alcohol delivery market*” (p. 8) and “*rapid alcohol delivery model*” (p. 9)

Yet sometimes it refers to delivery within two hours: “*FARE proposed that rapid home delivery should be prohibited, with a two-hour delay between purchase and delivery to prevent the continuation of an existing alcohol session*”. (p. 5)

Recommendation 11. Amend the *ACT Liquor Act* Dictionary to define rapid alcohol delivery as the delivery of alcohol within two hours of placing an order.

Rapid delivery fuels higher risk alcohol use and contributes to people ‘topping up’ with alcohol when they normally would have stopped drinking, increasing the likelihood that they will use alcohol while intoxicated. Evidence demonstrates that rapid delivery enables impulsive purchases and enables continuation of an existing alcohol session when the alcohol supply has been exhausted:

- A UNSW study published in 2023 found that one in five Australian adults who use popular alcohol delivery sites used a service to continue a home drinking session.⁴⁶
- FARE’s 2020 Alcohol Poll found of people ordering rapid delivery, 38 per cent drank more than 10 standard drinks on that occasion.⁴⁷
- A VicHealth survey found 77 per cent of people who ordered rapid delivery would have stopped if it was unavailable.⁴⁸

The discussion paper proposes a two-hour delay of the next *order*. Whilst this may reduce the frequency of orders, the paper acknowledges that this would be easy to get around, and it does not prevent the rapid *delivery* of any order.

A safety pause of two hours for retailers and delivery agents between order and delivery of alcohol-only orders can stop the rapid delivery of alcohol. This delay would be applied to alcohol-only orders. Deliveries of food with a small quantity of alcohol (eg. from restaurants), could be exempted from this delay.

Recommendation 12. Amend the *ACT Liquor Regulations* Sections 32, 33, and Schedule 2, to introduce a 2-hour safety pause between order and delivery of alcohol-only orders to stop rapid delivery of alcohol, which is found to contribute to higher risk drinking.

Support delivery staff

Currently in the ACT, there are no specific requirements for *delivery staff*, or for responsible service of alcohol (RSA) training related to the delivery of alcohol in a fundamentally different context to alcohol supply at premises. The delivery environment has significant differences to a licensed venue or bottle shop. Delivery employees are not inside a venue, like bottle shop staff, but alone on a person’s private property without CCTV, other colleagues or security staff.

The offence of a licensee supplying liquor to someone without the licensee holding a current RSA certificate, applies for supply *in licensed premises*. Alcohol delivery staff must be supported both with delivery-specific RSA training and legally protected from being penalised for delivery refusal with companies being held liable for breaches.

Not penalise staff and ensure companies are liable

The findings of the NSW “*Review of the Alcohol Delivery Reforms - Stage 1*” indicated that 10 per cent delivery drivers felt unprotected from being penalised, with nearly 1 in 10 who refused a delivery having been penalised by employer.⁴⁹ This indicates that these requirements are not yet being adequately enforced in NSW.

The discussion paper proposes that delivery drivers not be penalised by the licensee for non-deliveries, due to compliance requirements, and that delivery companies be held liable for breaches. This is welcome.

Recommendation 13. FARE supports the proposal to amend the *ACT Liquor Act* Sections 105, 110 and 225, to clarify that delivery companies (including bottle shops and online delivery providers), are liable for delivery breaches, such as delivery to children or people who are intoxicated.

Delivery-specific responsible service of alcohol (RSA) training

Responsible service of alcohol (RSA) training is only one element in preventing alcohol supply to children or people who are intoxicated. Despite the emphasis placed on mandatory RSA training across Australia, there is little evidence that training alone reduces the likelihood of sale of alcohol to people who are intoxicated.⁵⁰ It only has some effect when combined with strong regulation, compliance testing, penalties and strict enforcement. Current RSA training is designed for alcohol supply within premises, and much of it is not appropriate for the delivery of alcohol.

Delivery-specific RSA needs to be designed, prescribed and monitored with record-keeping of refusals and test purchasing. The findings of the “*Review of the NSW Alcohol Delivery Reforms - Stage 1*” indicated drivers asked for more plain English, and more support for de-escalation and communication.⁵¹

The discussion paper proposes that delivery staff or agents must undergo RSA training specifically tailored to the rapid alcohol delivery market. This proposed change is welcome, and will help ensure delivery staff are supported and safe, and that they understand their role, rights and responsibilities in refusing delivery of alcohol.

Recommendation 14. FARE supports the proposal to amend the *ACT Liquor Act* Sections 100 and 193 to require delivery staff of alcohol companies to undergo delivery-specific Responsible Service of Alcohol (RSA) training. This is to ensure they are safe, and that they understand their role, rights and responsibilities in refusing delivery of alcohol.

Records and reporting

Currently in the ACT, off licencees must provide an annual purchase report identifying suppliers and the price of alcohol sold *at premises*. A licensee must report any incident, involving violent, unlawful or anti-social behaviour, (but not intoxication), *at licensed premises*.

The discussion paper proposes keeping records of delivery refusals, and capturing delivery data showing volume of alcohol delivered by postcode. This is similar to the NSW requirements where delivery providers must keep records of the delivery postcode, the type of liquor delivered, and the volume delivered.⁵²

This data, (along with test purchasing), is necessary for monitoring the compliance of refusals (under 18, intoxicated, unattended). It is also needed to facilitate a more accurate calculation of the increase in alcohol supply density due to online delivery, (see *Risk-based licencing* section below). Access Canberra also needs to publish frequent reports on monitoring and enforcement activity.

Recommendation 15. FARE supports the proposal to amend the *ACT Liquor Act* Sections 31 and 131 to require alcohol companies to report delivery data such as refused deliveries, by geographic area to regulators (e.g., by Local Government Area), to enable monitoring of deliveries and frequency of compliance issues.

Recommendation 16. FARE supports the proposal to amend the *ACT Liquor Act* Sections 31, 142, and *ACT Liquor Regulations* Section 1.19, to require alcohol companies to report the volume of alcohol sold online and delivered by geographic area. This is needed for a more accurate calculation of alcohol supply density.

Recommendation 17. Amend the *ACT Liquor Act* Sections 131, 142, and *ACT Liquor Regulations* Section 1.19, to require the Commissioner to publish frequent reports on monitoring and enforcement activity including online sales data, and delivery data such as refused deliveries.

Limit late night delivery

The risk of alcohol harm increases later at night. Evidence shows that alcohol-related family violence and suicide peak late at night in the home:

- Alcohol-related assaults increase substantially between 6pm and 3am, with 37 per cent of these assaults occurring in the home and 57 per cent of those being family violence.⁵³
- Suicides and sudden or unnatural deaths involving alcohol predominantly happen at night, in the home environment.⁵⁴
- Alcohol is estimated to be involved in between 23 and 65 per cent of all family violence incidents reported to police.⁵⁵

Currently in the ACT, there are no specific requirements for *retail delivery*, including for delivery times. Licensed times for sale of alcohol to be consumed off-premises is 7am to 11pm. The discussion paper proposes no change, but says that a shorter window will be considered.

Licensed times should be amended so retailers and delivery agents are restricted to delivering, or allowing delivery, of alcohol from 10am to 10pm. There should not be difference for same day and non-same day deliveries, as non-same day delivery carries the same late-night risks of alcohol harm.

Recommendation 18. Amend the *ACT Liquor Regulations* Sections 32, 33, and Schedule 2, to limit all alcohol deliveries to between 10am and 10pm, on any day, to reduce the risks of alcohol-related family violence and suicide, which peak late at night in the home.

Compliance

Prohibited offences

A 2022 study found that a quarter of respondents had alcohol delivered while intoxicated, 75 per cent of whom were never or only sometimes refused delivery.⁵⁶ Sixty-one per cent of Victorians using rapid delivery weekly said they were regularly intoxicated when receiving their alcohol delivery (and were still given the order).⁵⁷

Currently in the ACT, the offence to 'supply' liquor to an intoxicated person, is for supply at a catered, permitted or licensed *premises*. The discussion paper proposes prohibiting harmful deliveries to 'excluded persons' (under 18, intoxicated), or excluded areas, and to keep a record of refused deliveries. It says a delivery cannot be left unattended, but does not make this an offence.

Recommendation 19. FARE supports the proposal to amend the *ACT Liquor Act* Section 105 and 110, establishing specific offences for the online sale or delivery of alcohol to people under 18, and for the delivery of alcohol to an intoxicated person.

Recommendation 20. Amend the *ACT Liquor Act* Part 8 to establish a specific offence for leaving an alcohol delivery unattended.

In addition to legislating specific regulatory offences, reporting requirements, and penalties, there are other effective compliance monitoring measures that can be adapted for online sales and delivery of alcohol. These include designing, prescribing and monitoring delivery-specific RSA training (see 'Delivery of order' above), and implementing test purchasing for online sale and delivery of alcohol (see below). Each of the compliance provisions give effect to the enforcement of the regulatory measures. This is the key benefit of government legislation and regulation, that it is enforceable with real consequences, (unlike ineffective industry self-regulation).

Test purchasing

The *ACT Liquor Act* has detailed provisions for compliance tests / controlled purchase operations (CPOs) that involves a young person (a purchase assistant), under the supervision of an authorised person, purchasing, or trying to purchase, liquor from a licensee. It is done to obtain evidence that may lead to the prosecution of a person for the offence of supplying liquor to child or young person.

This may involve the purchase assistant and the authorised person engaging in conduct that would normally be an offence against ACT law. The NSW government also used compliance test purchasing as part of its *Stage 1 Review of Alcohol Delivery Reforms*.⁵⁸

There is no reference to test purchasing in the discussion paper. Prescribing test purchasing operations for online sale and delivery can help ensure compliance with the requirements.

Recommendation 21. Amend the *ACT Liquor Act* Sections 187A to 187G to expand the current program of compliance tests to online sales and delivery of alcohol. This is to test compliance of the prohibitions against delivering alcoholic products to people under 18, people who are intoxicated or deliveries being left unattended.

Risk-based licensing

Develop specific risk ratings for online delivery

The purpose of risk-based licensing (RBL) is to align licensing fees and conditions with evidence of the risks of alcohol harm. RBL means that licensing fees are calculated using evidence-based risk factors, (trading hours, patron capacity, density and proximity, and compliance history).

Since 2010, the ACT has calculated and set liquor licensing fees according to the risk factors of venue type, occupancy and trading hours. RBL was found to contribute to a decline in the number of alcohol-related offences in the ACT by 25 per cent.⁵⁹

The rapid growth of online sales and delivery of alcohol introduces new risks of alcohol harm, including increased availability, accessibility, density of alcohol supply, and rapid and unsupervised delivery. There is no reference in the discussion paper to calculating fees based on a risk factor of online sale and delivery.

Recommendation 22. Amend the *ACT Liquor Act* Section 229 to establish a risk-factor for online sales and delivery to accurately reflect the increased risk of harms.

Supply density and cumulative impact assessment

There is substantial evidence showing the density of liquor outlets increases alcohol harm:

- A *NSW Bureau of Crime Statistics and Research (BOCSAR)* study found a higher concentration of hotel licences strongly predicted intimate and non-intimate partner violence.⁶⁰
- The *World Health Organisation (WHO)* has highlighted that neighbourhoods which have higher densities of alcohol outlets also have greater child maltreatment problems.⁶¹
- A summary of key literature by *Michigan Department of Community Health (MDCH)* identified associations with increased alcohol use and various alcohol harms.⁶²

The *ACT Liquor Act* requires consideration of the harm minimisation and community safety aspects of the proximity of alcohol outlets. However, there are no requirements about calculated outlet density, and the discussion paper has no proposal for developing a risk rating for density. (Although it proposes collecting online sales data geographically which is needed to calculate supply density.)

An equivalent for outlet density in a given geographic area needs to be developed for the delivery of alcohol, and included in the calculation of risk factors in RBL. A cumulative impact assessment framework can help manage the density of licensed premises and online sales and delivery of alcohol to ensure alcohol harms to the community are minimised. However, further development of specific data sources to be used will be necessary, requiring input from alcohol policy experts to determine the most appropriate way to incorporate online sales and delivery into the assessment.

Recommendation 23. Amend the *ACT Liquor Act* Section 229 to incorporate a risk factor for supply density, (as an equivalent for outlet density), for online sales and delivery of alcohol in a geographic area. Consult alcohol policy experts on the development, implementation and evaluation of such a risk factor.

Community consultation

Public consultation for online sales and delivery

The *ACT Liquor Act* requires decision-makers to take into account community safety and to protect and enhance community amenity, social harmony and wellbeing. A key means for doing this, is through effective public consultation, which involves all impacted members of a community having a role in liquor licensing decisions. Community participation in licensing is a function of democratic governance, procedural fairness, and supports their rights to object or lodge complaints.

The discussion paper does not include any reference to public consultation for online sales and delivery of alcohol. Liquor licence applications are the opportunity for the community to be involved in the decision-making process about the potential impact of increased access and supply of alcohol. However, the discussion paper does not propose a specific licence category for online sales and delivery businesses to apply for a licence, and therefore has no associated public consultation process triggered by such licence applications. There must be an equivalent process for the community to be heard, and for impact to be assessed, for online sales and delivery of alcohol in the relevant geographic area where it will be available.

The current ACT licence application public consultation process does not require a community impact statement (CIS) or equivalent. A CIS is usually an applicant-developed summary of the potential harms that a liquor licence might have in a locality. It provides the basis for the community to respond. The risk-assessment management plan (RAMP) prescribed in the Act for licence applications, requires an applicant to outline the features of the proposed *venue* and its management, including how potential impacts will be mitigated. However, the RAMP does not require engagement with community, reporting of community feedback or assessing likely impacts.

Genuine transparency and public participation

The ACT Government has committed to transparency, openness, collaboration and participation by citizens and the public in the governing process. The ACT '*open government*' initiatives are intended to enhance democracy and place the community at the centre of the governance process.⁶³ This should mean that liquor licensing is also '*community-centric*', prioritising the voice of the community in its decision-making processes. In the same way that the ACT Government has invited people in the ACT to '*have their say*' on these liquor licencing reforms, they also need to provide an ongoing consultation process for the regulatory oversight of online sale and delivery of alcohol.

Currently the liquor licence application process does not publish the full licence application, or the risk-assessment management plan (RAMP). Genuine engagement should be more pro-active, and include elements from across the '*Public Participation Spectrum*', (inform, consult, involve, collaborate and empower).⁶⁴ For liquor licensing, this means engagement with community stakeholders must include early, informed, transparent, and equitable participation in decision-making. For communities to effectively engage in licensing, they need to be appropriately informed and supported, and processes need to be transparent.

Recommendation 24. Amend the *ACT Liquor Act* Sections 33 to 36, and Sections 88 to 92B, to prescribe an effective community impact process, (eg. community impact statement), for online sales and delivery, publishing full licence applications with risk-assessment management plans specific to the delivery of alcohol. This is to adopt a *community-centric* approach to liquor licensing, that prioritises the voice, expectations, needs and aspirations of the community.

Support communities to have a genuine voice

Communities need support services to adequately engage in liquor licensing decisions and have their concerns heard. The current process already has a power imbalance that favours business interests over community. Companies have access to finances and resources to gain legal and other social planning advice and can run protracted appeals and defences. Impacted and concerned communities do not. Some community participants have indicated that professional engagement processes feel intimidating or inaccessible when dominated by legal professionals.⁶⁵

There is no targeted support for communities interacting with liquor licensing. Independent support should be resourced and made available for communities who wish to engage in licensing processes. An advisory and central information service is needed, with staff that have expertise in alcohol-related licensing systems and an understanding of community needs and expectations. This would support individuals and communities in navigating and interacting with the liquor licensing system.

A pilot of such a service was operated in NSW as the Alcohol Community Action project (ACAP).⁶⁶ The purpose of the ACAP pilot was to assist individuals and organisations who wanted to engage with liquor licensing. The project had two key resources, a community adviser and a website. The ACAP successfully assisted numerous communities in NSW to lodge objections to liquor licence applications and provided advice to individuals who were not aware of their rights when dealing with applications. The demand experienced by the ACAP demonstrates the need for such a service.

Recommendation 25. Amend the *ACT Liquor Act* Sections 33 to 36 to ensure engagement with all relevant stakeholders, by providing resourcing for targeted and independent support for members of the public impacted by increases in liquor supply density. This is to ensure the consultation process is informed by relevant community expertise of alcohol harm by improving access, information and support to navigate and engage with online sales and delivery liquor license application processes.

Conclusion

FARE's submission in response to the "*Regulation of Same Day Liquor Delivery Providers – A discussion paper*" has outlined how the ACT Government can effectively address the increased risk of alcohol harm from the rapid expansion of online sales and delivery of alcohol.

In considering changes to the Liquor Act, the ACT Government can take a human rights approach to prioritising the health and wellbeing of the community and contribute to the prevention of the harms from alcohol. This submission provides recommendations on how the Government can do this.

The discussion paper proposes evidence-based measures which can reduce the risk of harms from online sales and delivery of alcohol. These include effective ID checks for online sales and delivery, prohibiting delivery to intoxicated people and children, supporting delivery staff and enforcing compliance. These are welcomed.

However, there are significant gaps in the proposals. These include late night delivery until 11pm, no restrictions on rapid deliveries within two hours, and a licencing system that lacks both oversight of delivery companies, and adequate community engagement.

FARE's recommendations outline the steps that the ACT Government can take to implement an evidence-based approach to online sales and delivery of alcohol, ensuring that it aligns with harm minimisation and community expectations. This will allow the ACT Government to prioritise the wellbeing of ACT communities.

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