



Foundation for Alcohol Research & Education

**FARE submission to NSW consultation on the
*Draft Liquor Amendment (24-hour economy)
Bill 2020***

June 2020



The logo consists of a solid blue square. Inside the square, the words "STOPPING HARM CAUSED BY ALCOHOL" are written in white, uppercase, sans-serif font. "STOPPING" and "HARM" are on the first line, "CAUSED BY" is on the second line, and "ALCOHOL" is on the third line.

STOPPING
HARM
CAUSED BY
ALCOHOL

About the Foundation for Alcohol Research and Education

The Foundation for Alcohol Research and Education (FARE) is an independent, not-for-profit organisation working to stop the harm caused by alcohol.

Alcohol harm in Australia is significant. Nearly 6,000 lives are lost every year and more than 144,000 people are hospitalised making alcohol one of our nation's greatest preventive health challenges.

For more than a decade, FARE has been working with communities, governments, health professionals and police across the country to stop alcohol harm by supporting world-leading research, raising public awareness and advocating for changes to alcohol policy.

FARE is guided by the World Health Organization's (2010) *Global strategy to reduce the harmful use of alcohol* for stopping alcohol harm 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 info@fare.org.au.

FARE submission - Draft Liquor Amendment Bill 2020

Contents

Summary of recommendations	4
Incentives and sanctions (Schedule 1).....	4
Managing density (Schedule 2).....	4
Online sales and alcohol delivery (Schedule 3).....	4
Small bar reforms (Schedule 4).....	5
Harm minimisation	5
Alcohol sales data	5
Introduction	6
Incentives and Sanctions (Schedule 1 amendments)	7
Incentives.....	7
Penalties and compliance history risk loading.....	8
Transitional arrangement	8
Managing density (Schedule 2 amendments)	9
Implementation and evaluation using expert advice	9
Broader community input.....	9
Licence types considered under the Cumulative Impact Assessment Framework	9
Online sales and alcohol delivery (Schedule 3 amendments)	11
Rapid delivery of alcoholic products.....	11
Late night delivery of alcoholic products.....	12
Age verification for online alcohol sales and deliveries.....	12
Responsible Service of Alcohol training for the alcohol delivery environment.....	13
Interstate licensees supplying alcohol in NSW	13
Requirement to keep records of alcohol deliveries.....	14
Offence to supply alcohol to a person who is intoxicated.....	14
Holding companies accountable for delivering alcohol to children	15
Licence requirements for rapid delivery of alcoholic products	15
Small bar reforms (Schedule 4 amendments)	16
Allowing minors on small bar premises.....	16
Fast-tracking licence applications and removing Community Impact Statement requirements	16
Harm minimisation	18
Alcohol sales data	20
References	21

Summary of recommendations

Incentives and sanctions (Schedule 1)

- Do not introduce any annual liquor licence fee discount.
- Encourage faster compliance by applying the demerit risk loading each year a demerit point is held, rather than a once-off loading.
- Use penalty notices and fines (swift and certain sanctions) in combination with compliance history risk loading.
- Ensure continuity and integrity of compliance measures by integrating existing strikes for bad behaviour of licensees into the new system, rather than wiping previous noncompliance from the record even when the licensee has a history of bad behaviour.

Managing density (Schedule 2)

- Liquor and Gaming NSW should consult alcohol policy experts on the development, implementation and evaluation of the Cumulative Impact Assessment Framework.
- Members of the broader community, especially residents, community groups, service providers and businesses impacted by increases in liquor outlet density, should be consulted in the development and review of Cumulative Impact Assessments.
- Include small bars and alcohol delivery companies in the assessment of density in the new Cumulative Impact Assessment Framework.

Online sales and alcohol delivery (Schedule 3)

- Introduce a delay of two hours between purchase and delivery of alcohol.
- Limit deliveries to between 12pm and 9pm to reduce the likelihood of alcohol being used to 'top up' when people are already intoxicated, leading to increased risk of harm.
- Reduce the risk of children accessing and consuming alcohol by extending age verification to all alcohol sales and deliveries.
- Prescribe a Responsible Service of Alcohol (RSA) training course for alcohol delivery employees, to ensure that they are aware of their legal responsibilities, including to not supply alcohol to children or people who are intoxicated.
- Extend the requirement for interstate licensees with a delivery depot in-state to apply for a NSW licence, to all interstate licensees delivering same-day into NSW from across the border, thereby applying the principle to all interstate licensees conducting same-day delivery in NSW.
- Review the wording of the interstate licensees provision to ensure that it covers alcohol delivery companies that supply to customers in NSW from mobile packaged liquor outlets (refrigerated vans).
- Require interstate licensees applying for a NSW licence to complete a Community Impact Statement.
- Mandate licensees to provide records of all deliveries to Liquor and Gaming NSW on a quarterly basis.
- Make it a universal offence to supply alcohol to a person who is intoxicated.
- Reform the defence in Clause 114(5) of the Liquor Act which makes it virtually impossible to hold alcohol delivery companies to account for supplying alcohol to a child by next day delivery.

- Create a specific liquor licence or licence condition for rapid delivery of alcoholic products, to reflect the increased risk of alcohol harm from this type of alcohol delivery.

Small bar reforms (Schedule 4)

- Children should not be allowed in venues whose primary authorisation is to serve alcohol, including small bars.
- Small bars represent a greater risk to communities than cafés or restaurants. They should not have applications fast-tracked and they should have to complete a Community Impact Statement.

Harm minimisation

- The primary objective of the Liquor Act should be to minimise harm from the sale, supply and consumption of alcohol in order to prioritise public health and community interests. A definition of harm should encompass harm relating to the sale, supply and consumption of alcohol including:
 - the risk of harm to children, vulnerable people and communities (whether to a community as a whole or a group within a community);
 - the adverse economic, social and cultural effects on communities (whether on a community as a whole or a group within a community);
 - the adverse effects on a person's health;
 - alcohol dependency;
 - family violence, interpersonal violence; and
 - anti-social behaviour, including property damage.

Alcohol sales data

- Begin collecting and reporting state-wide alcohol sales data, in line with other Australian states and territories so that this data can be used to inform future policy decisions.
- Data collected should enable geospatial differentiation (e.g. by Local Government Area), differentiation between on-premise and off-premise alcohol sales, and include sales made online for delivery.

Introduction

The Foundation for Alcohol Research and Education (FARE) welcomes the opportunity to comment on the *Draft Liquor Amendment (24-hour economy) Bill 2020* ('Draft Bill') which amends the *Liquor Act 2007* ('Liquor Act'). The effective regulation of alcohol is essential to ensuring that alcohol harm is prevented and people in New South Wales (NSW) are healthy, safe and well.

There is strong community support for government action on alcohol harm. A January 2020 YouGov survey with a representative sample of NSW residents found that 78 per cent of people in NSW think more needs to be done to reduce harm caused by the sale and marketing of alcoholic products.¹ This submission provides evidence-based recommendations to reduce alcohol harm.

The community expects high standards from companies that sell alcoholic products. The Draft Bill contains a number of provisions to deal with the emerging and changing environment for the sale and supply of alcohol. FARE commends the NSW Government for being a first mover in regulating online alcohol sales and alcohol delivery. Online sales and delivery operates under low-level regulation and is largely unaffected by state-based legislation governing retail sales through traditional 'bricks-and-mortar' approaches. This move will close some of the gaps such as children being able to buy alcohol online.

However, there are sections of the Draft Bill that do not prioritise community health and safety. Regulatory change should not heighten the risks of alcohol harm, which sections of the Draft Bill do. The primary purpose of alcohol regulation should be to minimise the known harms alcohol can cause to the community.

A particular focus of FARE's submission is improving regulation of the online sale of alcohol and its delivery. This builds on our previous submission to the Liquor & Gaming NSW consultation on same-day delivery, a copy of which is attached.

This submission provides a number of recommendations to strengthen the current Draft Bill, with the purpose of ensuring a strong focus on the prevention and reduction of the significant harms that result from the sale of alcoholic products in NSW.

FARE's submission to this consultation provides recommendations on all four schedules of the Draft Bill, in the order in which they appear in Bill, and then makes recommendations on two further areas – harm minimisation and alcohol sales data – that should be considered as priorities for legislative reform.

Incentives and Sanctions (Schedule 1 amendments)

As outlined in the Summary of Changes document accompanying the Draft Bill, there are three alternative and somewhat overlapping sanction schemes under the Liquor Act which overcomplicate the regulatory framework:

- the Three Strikes Scheme
- the Declared Premises Scheme, commonly known as the Violent Venues Scheme
- the Minors Sanctions Scheme.

The current schemes fall short of meeting their objectives, in particular their ability to ‘target repeat offenders’. There has been inconsistent and subjective enforcement, meaning that sanctions are not swift and certain. This undermines the deterrent effect of sanctions; swift and certain sanctions are strong and predictable deterrents for offensive and dangerous conduct.^{2,3} Moreover, accountability of authorities to the schemes and licensees to the conditions and sanctions is low. The net result of this situation is that venues are not being held to account for risking the safety of patrons and compromising the amenity of local communities, and are profiting from this recklessness.

Consequently, the current schemes fail to effectively serve the public interest in harm minimisation. A streamlined and integrated sanctions scheme that is easy to understand for community, industry and government, will promote greater transparency and improve compliance. However, when integrating the schemes, the NSW Government should ensure that flaws in the current schemes regarding monitoring and enforcement are addressed.

FARE is concerned that the proposed new system does not adequately integrate the existing schemes, resulting in an ineffective system of incentives and sanctions to minimise alcohol harm. It is proposed that discounts be given to licensees for simply complying with the law and that existing demerit points be wiped from the record. FARE is not supportive of these benefits being given to venues under the rationale of ‘incentives’, when venues already receive incentives via the risk-based licencing system that encourages them to manage and design their venues safely.

Incentives

The remit of the liquor regulator is to ensure compliance with the legislative framework. Licensees should not be rewarded for compliance with the law under which it is their responsibility to operate.

FARE strongly opposes the use of incentives in the form of discounted annual liquor fee licences. The current risk-based licensing fees already provide significant discounts by adding risk loading elements only when venues have been non-compliant. For example, capacity loading is only applied when a venue has been non-compliant. The risk associated with venue capacity does not change whether the venue has been compliant or not and should be incorporated from the outset.

Venues that sell alcohol should contribute to the costs associated with the administration of liquor legislation, law enforcement, and the provision of public services responding to alcohol harm (including ambulance and police, emergency departments, social workers, and AOD treatment services). However, the current fee regime is not sufficient to recoup costs associated with administration of the licensing system. The Callinan Review into the Liquor Act identified that “the cost of administration of the sales of alcohol far exceeds the revenue derived from it by the New South Wales Government”. In particular, the cost to the Department is \$81 million per annum, while revenue from licences is just \$17 million. This does not take into account the additional burden of alcohol on public services.

Under the current model, licensees already receive significant discounts. No further discounts should be applied.

Recommendation: Do not introduce any annual liquor licence fee discounts.

Penalties and compliance history risk loading

The proposed demerit scheme will incorporate administration of demerits into compliance risk loading. As highlighted above, there are flaws in the current risk-based licensing model that should be addressed. However, FARE does support the premise of compliance history risk loading. The proposed model of incorporating a \$4,000 loading (40 fee units) once-off for the year the demerit point was administered, should be amended to be a yearly loading for each of the three years the demerit is registered. A once-off loading is not a big enough sanction; repeat offenders could easily absorb the cost. An annual loading would mean that every year when it is time to pay the annual licence fee, if the licensee is listed on the demerit point register they pay 40 fee units of compliance loading per registered demerit point. This would also encourage faster compliance.

FARE supports using annual compliance history risk loading in combination with swift and certain sanctions through the administration of penalty notices. Like the demerit scheme used for drivers' licences, this liquor licence scheme should incorporate swift and certain sanctions for each demerit point accumulated. Evidence suggests that delaying punishment is less efficacious. The combination of an immediate fine and additional compliance risk loading should work as an effective deterrent for non-compliance.

Recommendation: Encourage faster compliance by applying the demerit risk loading each year a demerit point is held, rather than a once-off loading.

Recommendation: Use penalty notices and fines (swift and certain sanctions) in combination with compliance history risk loading.

Transitional arrangement

FARE strongly opposes the removal of strikes from the previous scheme for a 'clean start', which means there is a lack of continuity between old and new systems. The historical performance of licensees should be translated into the new scheme as this bad behaviour should be recorded to ensure that the standard of harm minimisation is upheld. Not doing so is unfair to other licensees and the broader community.

Recommendation: Ensure continuity and integrity of compliance measures by integrating existing strikes for bad behaviour of licensees into the new system, rather than wiping previous noncompliance from the record even when the licensee has a history of bad behaviour.

Managing density (Schedule 2 amendments)

There is substantial evidence to demonstrate that the density of liquor outlets contributes to an increase in alcohol harm.^{4,5,6} A study by the NSW Bureau of Crime Statistics and Research (BOCSAR) found that “the concentration of hotel licences in a [local government area, or LGA], particularly at higher density levels, was strongly predictive of both intimate partner and non-intimate partner assault rates”.⁷

Additionally, the World Health Organization has highlighted that neighbourhoods which have higher densities of alcohol outlets (both on- and off-licence) also have greater child maltreatment problems. These neighbourhoods are also more socially disadvantaged with fewer resources available to support families. This situation can lead to increased stress for families and restrict development of social networks that can prevent child maltreatment.⁸

The new Cumulative Impact Assessment Framework (‘the framework’) has the potential to better manage the density of licensed premises to ensure alcohol harms to the community are minimised. However, ongoing evaluation will be needed to ensure the framework is effectively achieving this goal. Below we make recommendations for how the implementation of the framework should be managed to ensure its success.

Implementation and evaluation using expert advice

The use of data, such as the current LiveData tool, to inform Cumulative Impact Assessments (CIAs) is a welcome idea. However, further development of the exact data sources to be used will be necessary, requiring input from alcohol policy experts.

FARE encourages the NSW Government to engage with researchers and alcohol policy experts throughout the implementation of this new framework.

We recommend Liquor & Gaming NSW consult the following experts in the implementation and evaluation of this framework:

- Dr Michael Livingston, Centre for Alcohol Policy Research, La Trobe University
- Dr Claire Wilkinson, Drug Policy Modelling Program, UNSW
- Professor Peter Miller, Centre for Drug, Alcohol and Addiction Research, Deakin University
- Dr Alison Ziller, Department of Geography and Planning, Macquarie University

Recommendation: Liquor and Gaming NSW should consult alcohol policy experts on the development, implementation and evaluation of the Cumulative Impact Assessment Framework.

Broader community input

While expert advice is needed, ensuring the broader community has the opportunity to have their say on CIAs is also necessary. Currently the framework identifies ‘relevant stakeholders’ as local council, police, the Ministry of Health, and relevant liquor licence holders. This definition is narrow as it excludes members of the broader community who may be impacted by outlet density, such as residents, community groups, service providers and businesses. These members of the community should be consulted at appropriate times in the development of a CIA.

Recommendation: Members of the broader community, especially residents, community groups, service providers and businesses impacted by increases in liquor outlet density, should be consulted in the development and review of Cumulative Impact Assessments.

Licence types considered under the Cumulative Impact Assessment Framework

FARE opposes the exclusion of small bars from the framework.

The exclusion of small bars under the definition of 'relevant licence' for CIAs will mean that the assessments will not be as robust or as useful as they should be. Venues with a small bar licence should not be assumed to be 'lower risk' and excluded in assessments of impact on community wellbeing. There is no evidence to demonstrate that small bars do not contribute to levels of alcohol harm. Neither does evidence support the view that small bars are inherently safer for patrons on a per capita basis. Regulatory exemptions for small bars should not be granted on this unproven assumption.

An area with a high density of small bars has increased availability of alcohol, which carries risks to community health and safety. Small bars should be considered in any assessments of density in the new framework.

The Draft Bill also doesn't explicitly state that online companies offering alcohol delivery will be considered in the new framework. While they don't have a fixed place, these mobile companies contribute towards the availability of alcohol in a given geographic location. Given this, Liquor and Gaming NSW should consider how alcohol delivery companies are considered in any density assessments.

Recommendation: Include small bars and alcohol delivery companies in the assessment of density in the new Cumulative Impact Assessment Framework.

Online sales and alcohol delivery (Schedule 3 amendments)

This section builds on issues addressed and recommendations made by FARE in our submission to the 2019 Liquor & Gaming NSW consultation on same-day delivery.⁹

Currently in NSW (and across Australia), online sales of alcoholic products operate under minimal regulation due to outdated language and provisions in the legislation:

- It is not a requirement for companies that sell alcohol online to verify age at point of sale or point of delivery, thereby allowing deliveries to be made directly to children or to be left unattended and collected by a child.
- Alcohol deliveries can be made to people who are intoxicated due to licensees/deliverers not withholding delivery when a person is intoxicated or leaving alcohol unattended.
- Alcohol delivery companies in other jurisdictions can supply alcohol to NSW residents without a NSW licence or accountability to the community or Liquor & Gaming NSW. This also means that Liquor & Gaming NSW does not know how many alcohol delivery companies are operating in the state.

Provisions within the Liquor Act were drafted with traditional ‘bricks and mortar’ premises in mind and have never been updated to encompass new online companies.

It is important that all licensees, including companies that deliver alcohol, are required to meet community standards and expectations when it comes to the sale of alcoholic products. The Draft Bill goes part way to addressing this by:

1. introducing age verification measures for online sale and same-day delivery of alcoholic products;
2. preventing same-day deliveries from being left unattended;
3. creating an offence to make a same-day alcohol delivery to a person who is intoxicated; and
4. requiring a same-day alcohol delivery company with a delivery depot in NSW to hold a NSW licence.

However, a fundamental flaw of Schedule 3 of the Draft Bill is that it only focuses on same-day delivery. Delivery of alcohol a day or more after ordering still poses risks of delivery to children and people who are intoxicated. The above four measures should be extended to all alcohol deliveries, not just same-day.

Alcohol delivery to the home also normalises alcohol as an everyday commodity, and further entrenches its use in the home environment. The COVID-19 pandemic in Australia has already increased the likelihood of risky drinking, family violence and suicide in the community. A recent survey conducted by FARE in partnership with Women’s Safety NSW found that over half (51%) of surveyed domestic violence specialists reported that there has been an increase in the involvement of alcohol in family violence situations since the COVID-19 restrictions were introduced.¹⁰

We provide specific recommendations on online sales and home delivery below, including responses to the Schedule 3 amendments.

Rapid delivery of alcoholic products

‘Rapid delivery’ of alcoholic products 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.

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. A recent VicHealth study found 40 per cent of people would have stopped drinking if rapid alcohol delivery wasn't available¹¹ and a FARE 2020 poll shows 70 per cent of Australians who use rapid alcohol delivery drink alcohol at risky levels (over 4 standard drinks) on that occasion.¹²

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).¹³

The more intoxicated a person is, the more likely they are to harm themselves or others. Alcohol intoxication fuels death¹⁴, suicide¹⁵, disease¹⁶, injury¹⁷, violence¹⁸, domestic violence¹⁹, mental illness²⁰, road accidents²¹, child neglect and abuse²².

Rapid delivery and mobile packaged liquor outlets have created a step change in availability and risk that is unacceptable. Rapid delivery enables impulsive purchases and enables continuation of an existing alcohol session when the alcohol supply has been exhausted.

Liquor & Gaming NSW should mandate a delay of at least two hours between purchase and home delivery of alcohol to reduce the risk of delivery to people who are already intoxicated.

Recommendation: Introduce a delay of two hours between purchase and delivery of alcohol.

Late night delivery of alcoholic products

Currently alcohol can be delivered to homes in NSW until midnight.

Alcohol harm in the home is likely to occur late at night. Alcohol-related assaults increase substantially between 6pm and 3am, with 37 per cent of alcohol fuelled assaults occurring in the home and more than half (57%) of those being family violence.²³ Suicides and sudden or unnatural deaths involving alcohol predominantly happen at night, in the home environment.²⁴ The rapid delivery of alcohol to the home, late at night, only further exacerbates these known risks.

When sale of takeaway alcohol was limited to 9pm and earlier in parts of Switzerland, hospital admissions for alcohol intoxication reduced significantly across a wide age range. Similar results have been seen elsewhere in Switzerland and in Germany.²⁵

Separate operating times for alcohol delivery (currently only same-day delivery) and off-licences should remain in the Bill. The last time for delivery should be brought forward to 9pm, and earliest time in the day set at 12pm (midday).

Recommendation: Limit deliveries to between 12pm and 9pm to reduce the likelihood of alcohol being used to 'top up' when people are already intoxicated, leading to increased risk of harm.

Age verification for online alcohol sales and deliveries

Currently companies that deliver alcoholic products either on the same day or at a later time do not verify age at point of sale and do not consistently verify age at point of delivery. They are also able to leave alcohol at an address unattended. This means that children can buy and access alcoholic products.

FARE welcomes the inclusion of Clauses 114(l) and 114(k) in the Draft Bill to require age verification at point of sale and point of delivery for same-day deliveries.

However, FARE strongly recommends that this be extended to all deliveries, not just same-day. A 2020 UNSW study into online sale and delivery of alcohol found that 75 per cent of NSW alcohol delivery companies advertised a willingness to leave alcohol unattended, creating a serious risk of supply to children.²⁶ A recent study in England and Wales found that 8 per cent of young people who had just turned 18 reported having successfully obtained alcohol via online sales and delivery as under 18s, while 12 per cent knew of others who had successfully done so.²⁷

Any sale or delivery of alcoholic products without age verification creates a risk that alcoholic products will be accessed and consumed by a child. It makes sense that if alcohol delivery companies are required to verify age at point of sale for same-day deliveries, they could easily extend that to all

deliveries. 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 services that ship less dangerous products (such as event tickets and mobile phones) and should apply to the delivery of alcoholic products.

Recommendation: Reduce the risk of children accessing and consuming alcohol by extending age verification to all alcohol sales and deliveries.

Responsible Service of Alcohol training for the alcohol delivery environment

Currently there is no requirement for alcohol delivery companies to train their staff in Responsible Service of Alcohol (RSA) principles which are designed to reduce the risk of children or people who are intoxicated consuming alcoholic products.

There should be a government prescribed training course for alcohol delivery companies. This is because the delivery environment is different 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.

A foundation exists in the current RSA training framework, which the NSW Government could extend to online sales and delivery of alcohol. The course could focus on the legal obligations alcohol delivery companies have, including ensuring alcohol is not supplied to children or people who are intoxicated. The course could also properly prepare employees so they feel confident in fulfilling these duties, such as refusing delivery, while also ensuring they can safely do so.

An extension of the existing mandated RSA course will ensure there is greater transparency in how delivery employees are trained and create consistency across NSW.

It is also important to note that RSA training is only one element of preventing alcohol supply to children or people who are intoxicated, and is only effective if accompanied by strong regulation and compliance testing.

Recommendation: Prescribe a Responsible Service of Alcohol (RSA) training course for alcohol delivery employees, to ensure that they are aware of their legal responsibilities, including to not supply alcohol to children or people who are intoxicated.

Interstate licensees supplying alcohol in NSW

Currently, interstate licensees can sell and supply alcohol to people in NSW without a NSW liquor licence, which means they are not accountable to the NSW community or to Liquor and Gaming NSW.

FARE welcomes the proposal to require interstate licensees to have a NSW licence if they store alcoholic products in state for use in same-day delivery. This is crucial because having a distribution point in-state significantly alters the risk profile of the company, in particular the speed at which a delivery can be made. Same-day delivery, in particular rapid delivery (within two hours), has a distinct risk profile because it fuels intoxication by prolonging existing alcohol sessions when the supply has been exhausted.

It is important to remember that delivery methods are changing. For example, a recently established company [Wine Depot](#), has been offering warehouse space in-state so that interstate wineries can offer quicker delivery than they have done traditionally. The current proposal seems well placed to deal with this. However, it should be extended to cover interstate licensees delivering same-day into NSW from across the border.

The precise wording of the provision will need to be revised to ensure that it covers alcohol delivery companies that supply to customers in NSW from mobile packaged liquor outlets (refrigerated vans).

The community who experiences harm from the increased alcohol supply should have a chance to object to this additional alcohol availability in their area. Therefore, interstate licensees applying for a NSW licence in this circumstance should be required to complete a community impact statement.

Recommendation: Extend the requirement for interstate licensees with a delivery depot in-state to apply for a NSW licence, to all interstate licensees delivering same-day into NSW from across the border, thereby applying the principle to all interstate licensees conducting same-day delivery in NSW.

Recommendation: Review the wording of the interstate licensees provision to ensure that it covers alcohol delivery companies that supply to customers in NSW from mobile packaged liquor outlets (refrigerated vans).

Recommendation: Require interstate licensees applying for a NSW licence to complete a Community Impact Statement.

Requirement to keep records of alcohol deliveries

Currently, there is no requirement for alcohol delivery companies to keep a record of their deliveries or to share data with Liquor and Gaming NSW.

Liquor and Gaming NSW has proposed a requirement for alcohol delivery companies to keep records of all 'non-deliveries' – where a delivery to an address is refused due to the person being under 18, intoxicated or unable to provide ID. Collecting better data is a step in the right direction, but this proposal should be extended to all deliveries.

Only recording non-deliveries means the added paperwork of logging a non-delivery could create a disincentive to withhold delivery. If records were kept for *all* deliveries, it would not only remove the disincentive, but also create a data source which would assist Liquor and Gaming NSW to implement evidence-based policy in future. Data on the delivery would include the post code, time and date of delivery, whether delivery was withheld and for what reason. Licensees should be mandated to provide the proposed records to Liquor and Gaming NSW on a quarterly basis.

Recommendation: Mandate licensees to provide records of all deliveries to Liquor and Gaming NSW on a quarterly basis.

Offence to supply alcohol to a person who is intoxicated

Currently it is not an offence in NSW to supply alcohol *by delivery* to a person who is intoxicated.

Clause 114J of the Bill creates a new offence of supplying alcohol to a person who is intoxicated by same-day delivery. This is a really important change that will reduce the risk of such supply.

However, it should be extended to all deliveries since supply to a person who is intoxicated is equally problematic regardless of when the delivery is received.

The more intoxicated a person is, the more likely they are to harm themselves or others. Alcohol intoxication increases the risk of death²⁸, suicide²⁹, disease³⁰, injury³¹, violence³², domestic violence³³, mental illness³⁴, road accidents³⁵, child neglect and abuse³⁶. Therefore, it is in the best interests of the community, if the supply of alcohol can be disrupted, rather than perpetuated.

The new provision in Clause 114J of the Draft Bill should be extended to all deliveries of alcoholic products. An alternative way to address this would be to amend Clause 73 of the Liquor Act to make it relevant to all supply, rather than just on licensed premises.

Supplying alcohol to a person who is intoxicated should always be an offence.

Recommendation: Make it a universal offence to supply alcohol to a person who is intoxicated.

Holding companies accountable for delivering alcohol to children

Currently it is virtually impossible to hold alcohol delivery companies to account for supplying alcohol to a child. This is due to the way Clause 114 of the Liquor Act is written. Liquor and Gaming NSW and the NSW Government are making crucial reforms through the Draft Bill to change this and ensure that proof of age documents are verified for same-day delivery. Unfortunately, the problems with Clause 114 will still apply to next day delivery under the current proposal.

The problem is created through the interaction of Clause 114(3) and Clause 114(5). Clause 114(5) exculpates the licensee of the offence of supplying alcohol to a child if they complied with 114(3). But 114(3) contains no provisions for age verification. Clause 114(3) requires the licensee to ask for age but not verify it, meaning a child can enter a fake birth date. It then says that the delivery can be left in accordance with the customer's instructions. This means that a child can enter a fake birth date and request for a delivery to be left unattended. If this does occur, the licensee is exculpated of an offence. This is unacceptable.

To address this, Clause 114 should be amended through a combination of the following changes:

- (3)(a) - remove "require the prospective purchaser to supply the purchaser's date of birth" and replace with "verify the purchaser's date of birth"; delete "unless the prospective purchaser has previously supplied the purchaser's date of birth to the licensee"
- (3)(b)(iii) - remove in its entirety (this would have the effect of disallowing all unattended deliveries)
- (5)(a) - remove this defence in its entirety

Recommendation: Reform the defence in Clause 114(5) of the Liquor Act which makes it virtually impossible to hold alcohol delivery companies to account for supplying alcohol to a child by next day delivery.

Licence requirements for rapid delivery of alcoholic products

In the current licensing system, an alcohol delivery company undertaking rapid delivery is treated the same as one undertaking next day delivery, despite the additional risks it presents. Although there is currently an 'online packaged liquor licence' category, this is not specific to rapid delivery, and some operators conducting delivery services use a regular packaged liquor licence.

If rapid delivery is allowed to continue, there should at least be a specific liquor licence or licence condition required for this type of company. Rapid delivery is not simply a different method of obtaining alcohol to a bottle shop - it represents a step change in alcohol availability and consequent risks in alcohol harms. As mentioned above, a recent VicHealth study on rapid delivery found 40 per cent of people would have stopped drinking if rapid alcohol delivery wasn't available.³⁷

Creating a specific licence or licence condition for rapid deliveries would enable Liquor and Gaming NSW to know how many rapid delivery operators there are, their hours and areas of operation. This would also create a policy lever that could be used in future, for example to raise the licence fee.

Recommendation: Create a specific liquor licence or licence condition for rapid delivery of alcoholic products, to reflect the increased risk of alcohol harm from this type of alcohol delivery.

Small bar reforms (Schedule 4 amendments)

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

The situation as it stands is problematic. Currently small bars are exempt from certain application notification requirements; they do not need to complete a community impact statement and are afforded automatic extension of trading hours to 2am. The 2016 changes which increased the capacity of small bars from 60 to 100 persons, and the 2019 changes to 120 persons, have exacerbated the effect of these exemptions, increasing adverse risk to the community. Additionally, the *Liquor Regulation 2018* allows (until February 2021) for unlimited conversion of existing licences to small bars, thereby increasing the number of outlets that are exempt from certain regulatory requirements.

The proposed small bar reforms in the Draft Bill provide further exemptions and concessions. We are concerned that the continuing de-regulation of small bars combined with the increased number of small bar licences could see increases in harm due to the lack of regulatory oversight and inability of local communities to consult on matters concerning small bar licences. Below, we provide a response and recommendations to specific parts of Schedule 4 amendments.

Allowing minors on small bar premises

FARE opposes the allowance for children to enter small bars. It should not be assumed that every small bar is lower risk or an appropriate place for children, especially late at night. Risks, including a high rate of intoxicated adults, need to be considered in setting rules that match community expectations.

Children should not be allowed in licensed venues whose primary function is to sell alcohol. This can contribute to the social pressure to consume alcohol and socialisation of alcohol intoxication from an early age.

Recommendation: Children should not be allowed in venues whose primary authorisation is to serve alcohol, including small bars.

Fast-tracking licence applications and removing Community Impact Statement requirements

FARE does not support fast-tracking licence applications. Small bars should not be considered at the same risk level of restaurants and cafes as their primary purpose is to sell alcohol, not food. The risk and impact on the community should be considered properly, including the ability for community voices to be heard.

Community participation in licensing matters is a function of democratic governance and procedural fairness. It enables local autonomy and informed community choice in the direction of local health, safety and amenity issues related to alcohol. Informing the public of licence applications, and supporting them to exercise their rights to object or submit complaints, underpins regulatory decision-making to best serve the 'public interest' and is consistent with the Objects of the Liquor Act.

In order for the public to effectively engage in licensing matters they need to be appropriately supported and informed, processes need to be transparent, and the regulators need to be sufficiently resourced and act with the highest levels of objectivity and impartiality. The Community Impact Statement (CIS) provides a system for impact assessment and community consultation. While FARE has expressed concerns regarding the implementation of the CIS in previous consultations, without a CIS there is no system or requirement for applicants to assess and determine the impact on the community, or to deliver proof to the community that the impact will not be harmful. Merely notifying stakeholders of an application is not sufficient, as the community does not have the information or resources required to properly assess the notification.

Recommendation: Small bars represent a greater risk to communities than cafés or restaurants. They should not have applications fast-tracked and they should have to complete a Community Impact Statement.

Harm minimisation

Alcoholic products cause considerable harm within the community and this should be reflected in the laws that govern the sale and supply of alcohol. Currently the Liquor Act does not include harm minimisation as an Object and this prioritisation of public health and safety has not been addressed in the Draft Bill.³⁸

The Objects of the Liquor Act are currently as follows:

Section 3 (1) (a) To regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community,

(b) to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,

(c) to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.

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

Section 3 (2) (a) The need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),

(b) The need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor, and

(c) The need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

The Objects of the Liquor Act prioritise business interests and, in many respects, hold conflicting interests between harm minimisation and enhanced competition. These conflicting interests challenge the licensing authority's interpretation of alcohol harm risks when deciding on matters put before it.³⁹ The primary objective of Government should be to minimise harm from alcohol and as such the key legislative instrument that underpins the entire regulatory framework – the Liquor Act – should include harm minimisation within its Objects. The South Australian *Liquor Licensing Act 1997* is an illustrative example of how this might be achieved.⁴⁰

South Australia's *Liquor Licensing Act 1997* states:

(1) The object of this Act is to regulate and control the promotion, sale, supply and consumption of liquor—

(a) to ensure that the sale and supply of liquor occurs in a manner that minimises the harm and potential for harm caused by the excessive or inappropriate consumption of liquor; and

(b) to ensure that the sale, supply and consumption of liquor is undertaken safely and responsibly, consistent with the principle of responsible service and consumption of liquor; and

(c) to ensure as far as practicable that the sale and supply of liquor is consistent with the expectations and aspirations of the public; and

(d) to facilitate the responsible development of the licensed liquor industry and associated industries, including the live music industry, tourism and the hospitality industry, in a manner consistent with the other objects of this Act.

(1a) For the purposes of subsection (1)(a), harm caused by the excessive or inappropriate consumption of liquor includes—

(a) the risk of harm to children, vulnerable people and communities (whether to a community as a whole or a group within a community); and

(b) the adverse economic, social and cultural effects on communities (whether on a community as a whole or a group within a community); and

(c) the adverse effects on a person's health; and

(d) alcohol abuse or misuse; and

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

Recommendation: The primary objective of the Liquor Act should be to minimise harm from the sale, supply and consumption of alcohol in order to prioritise public health and community interests. A definition of harm should encompass harm relating to the sale, supply and consumption of alcohol including:

- a. the risk of harm to children, vulnerable people and communities (whether to a community as a whole or a group within a community);**
- b. the adverse economic, social and cultural effects on communities (whether on a community as a whole or a group within a community);**
- c. the adverse effects on a person's health;**
- d. alcohol dependency;**
- e. family violence, interpersonal violence; and**
- f. anti-social behaviour, including property damage.**

Alcohol sales data

FARE recommends that the NSW Government begin collecting and reporting state-wide alcohol sales data, in line with many other Australian states and territories. This valuable data will contribute towards evidence-based regulation of alcohol by government and the community, further strengthening existing data-driven tools such as the LiveData tool and Cumulative Impact Assessment Framework.

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

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

Alcohol sales data is the gold standard recommendation of the World Health Organization (WHO) for measuring alcohol consumption within communities.⁴¹ Self-reported survey data has been found to be incredibly inaccurate, accounting for less than 50 per cent of consumption.⁴² Reliable estimates of alcohol consumption at the local level is crucial for monitoring, policy development and evaluation, targeting and program planning.⁴³ It is critical that all Australian states and territories, including NSW, gather consistent and reliable state-wide alcohol sales data.

Proper monitoring and regulation of alcohol in Australia requires robust data which can be used by government and the community to make informed decisions. Many other states and territories, such as Victoria, WA, NT, Queensland and most recently Tasmania, collect alcohol sales data. This provides valuable insight for the Australian community into alcohol use trends.

FARE recommends that the NSW Government joins other jurisdictions in collecting sales data which enables calculation of volumes of pure alcohol sold. Similar to other jurisdictions, this data could be reported at the Local Government Area level to enable geospatial analysis. Furthermore, it should consider collecting detailed sales data that enables the differentiation between on-premise and off-premise alcohol sales. This data would supplement the already sophisticated geospatial data collected about density and harms, further strengthening the data driven Cumulative Impact Assessment Framework.

Finally, an area that has been identified as data-poor is online sales and alcohol delivery. Currently alcohol companies engaging in these services collect significant amounts of data on the users, and are able to build strong geospatial and demographic profiles of demand. This data would be of immense use to the government in areas including health, domestic violence, local planning and liquor regulation. As we have seen in other areas with emerging business models it is possible to create strong data sharing frameworks, and this should be explored as a matter of urgency.

Recommendation: Begin collecting and reporting state-wide alcohol sales data, in line with other Australian states and territories so that this data can be used to inform future policy decisions.

Recommendation: Data collected should enable geospatial differentiation (e.g. by Local Government Area), differentiation between on-premise and off-premise alcohol sales, and include sales made online for delivery.

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PO BOX 19 DEAKIN WEST ACT 2600

02 6122 8600 | info@fare.org.au | www.fare.org.au