

# Submission to the NSW Liquor Licensing Reform Options Consultation

January 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.

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# Contents

<b>Executive summary</b> .....	<b>4</b>
<b>Recommendations</b> .....	<b>5</b>
<b>1. Strengthen community participation</b> .....	<b>8</b>
Make liquor licensing ‘community-centric’ .....	8
Improve the community engagement process .....	8
Support communities to have a genuine voice with more inclusive consultation .....	12
<b>2. Protect the community with evidence-informed, risk-based licensing</b> .....	<b>14</b>
Improve risk-based licensing with genuine harm reduction measures.....	14
Ensure regulatory oversight for all applications before approval.....	15
Maintain enforcement action of penalty infringement notices.....	15
Review adequacy of fees for all licenses, based on all risk factors .....	16
<b>3. Include all alcohol harm risk factors in risk-based licensing</b> .....	<b>18</b>
Retain and improve location and capacity as risk factors .....	18
Maintain trading hours’ restrictions, including Sundays and six-hour closure .....	19
Maintain rules for restricted access by children and young people .....	19
<b>4. Support clinically supervised sobering up services</b> .....	<b>21</b>
Implement evidence-based harm reduction measures for people who are intoxicated .....	21
<b>5. Keep up with rapidly changing environment</b> .....	<b>23</b>
Provide effective regulation of online sales and delivery of alcohol.....	23
Provide effective regulation of no and low alcohol products .....	24
<b>6. Reduce the risk of alcohol harm - the purpose of liquor licensing</b> .....	<b>27</b>
Make alcohol harm reduction the primary object of liquor licensing.....	27
<b>7. Conclusion</b> .....	<b>29</b>
<b>References</b> .....	<b>30</b>

## Executive summary

The most important thing is the health, safety and wellbeing of our children, families and communities. Community safety and wellbeing includes people being protected by effective liquor licensing from the increased risk of alcohol harm. Putting the health and wellbeing of people first, also means empowering them to have a genuine say in the decisions that impact them, including liquor licensing decisions.

Alcoholic products cause significant harm in the New South Wales (NSW) community. This should be reflected in the laws that govern the sale and supply of alcohol. Alcohol is a cause of disease, injury, and death, and associated with increased risks of mental ill-health, suicide, family violence, (including domestic and intimate partner violence), cancer, Fetal Alcohol Spectrum Disorder (FASD) and significant social and economic losses to individuals and the community.

NSW communities expect that the NSW Government will prioritise their wellbeing, placing them at the centre of liquor licensing processes intended to minimise the harm from alcohol. This means building protections from the risk of alcohol harm by implementing harm reduction measures based on expert evidence, and on the voices of those impacted. To strengthen community participation in liquor licensing, community voices need to be genuinely heard, and incorporated into liquor licensing processes. This means making liquor licensing ‘community-centric’, by improving engagement to support communities to have a genuine voice that influences decision-making.

There are evidence-based approaches to liquor licensing that can help protect the community by reducing the risk of harm from alcohol. Risk-based licencing that includes all alcohol harm risk factors and genuine harm reduction measures, minimises the risk of alcohol harm to the community. These harm reduction measures include regulatory oversight for all applications, enforcement action of penalty infringement notices and risk-based fees for all license classes. Other measures include controls on access to venues by children and young people, reducing the risk of harm to people in licensed venues and providing effective regulation of online sales and delivery, and alcohol-free and low-alcohol products.

The *Liquor Licensing Reform Options Discussion Paper* proposes some changes which can improve community engagement and access to licensing consultation. These include aligning liquor licensing with development application planning processes, enhanced notifications and improving the inclusion and diversity of consultation. These measures are welcomed.

However, there are proposed changes in the Discussion Paper which involve the rolling back of rules designed to minimise harm from alcohol. These rules protect the community by enforcing restrictions on hours, location, and access. These changes are proposed without additional harm reduction measures to mitigate harm from alcohol, and without evidence about the impact on the risk of alcohol harm. If implemented, these changes would increase the risk of alcohol harms in the community. Such changes would also be inconsistent with the objects of NSW Liquor Act, that liquor licensing must be consistent with the expectations, needs and aspirations of the community.

FARE’s submission outlines ways in which the NSW Government can strengthen the Liquor Act with evidence-based, community-centric measures to help protect the community from increased risk of alcohol harm. FARE thanks the NSW Government for the opportunity to make this submission on the *Liquor Licensing Reform Options Discussion Paper*.

# Recommendations

## Strengthen community participation

**Recommendation 1.** Adopt a *community-centric* approach to liquor licensing, that prioritises the voice, expectations, needs and aspirations of the community, to minimise harm from alcohol to the community.

**Recommendation 2.** Strengthen the transparency of the community consultation process, by publishing all relevant documents on the Noticeboard, including community submissions and Applicant responses. This will help to ensure transparency of the process and ensure community concerns are genuinely heard and prioritised.

**Recommendation 3.** Combine the best practices of Development Application and Liquor Licensing processes into a joint Social Impact Assessment, with an improved list of requirements, and retaining the 60-day consultation period. This will improve the accuracy and completeness of the assessment process, and ensure community stakeholders have time to engage.

**Recommendation 4.** Provide resourcing for targeted and independent support for members of the broader community, (especially residents, community and health groups, service providers and businesses impacted by increases in liquor outlet density), to genuinely navigate and engage with liquor license application processes.

**Recommendation 5.** Include engagement with all relevant stakeholders such as people with lived experience, researchers and harm reduction policy experts, and public health bodies, to ensure the consultation process is informed by relevant expertise of alcohol harm.

**Recommendation 6.** Maintain an open and diverse community consultation process for all applications to ensure community consultation informs all risk assessments. Do not restrict consultation timeframes or access based on an Applicant-assessed risk rating.

## Protect the community with evidence-informed, risk-based licensing

**Recommendation 7.** Ensure that any new endorsements or licensing options added to expand business operations within a *'licence-builder'* model, also adds additional community consultation requirements and evidence-based harm minimisation measures as conditions.

**Recommendation 8.** Commission independent research to determine the associated risks of harm from alcohol of different licence types and their conditions, before reducing or changing the number of licenses and subclasses. This would be similar research to the current Centre for Alcohol Policy Research investigation for the Independent Liquor and Gaming Authority.

**Recommendation 9.** Require all applications to have regulatory oversight before granting approval to operate, so that community input can be assessed alongside all risk factors (trading hours, patron capacity, location and compliance history). Do not provide *'interim approval'* for any applications, *'low-risk'* or otherwise.

**Recommendation 10.** Maintain the enforcement action of penalty infringement notices, to preserve the integrity and harm reduction value of infringement notices. Do not allow breached venues to use *'Improvement Notices'* to continue trading while in breach of their license.

**Recommendation 11.** Ensure that license fees adequately reflect all risk factors of each class of license, that they contribute to the costs associated with alcohol harm, and that they act as an incentive for licensees to reduce the risks of alcohol harm.

## **Include all alcohol harm risk factors in risk-based licensing**

**Recommendation 12.** Incorporate all risk factors of alcohol harm into the calculation of risk ratings and license fees, to ensure that risk-based licensing accurately reflects the risk of alcohol harm. These include business activity, trading hours, patron capacity, location (density and proximity), and compliance history.

**Recommendation 13.** Retain the current four tiers of patron capacity risk loading (and associated fees) and apply to risk ratings from the outset (not just when non-compliant), to properly recognise the risks of alcohol harm associated with increasing patron capacity.

**Recommendation 14.** Retain 'Location' as a risk category, expand it to include both density and proximity, (not just Sydney CBD and Kings Cross), and include small bars in the risk assessment, to accurately reflect the risks of venue density and proximity.

**Recommendation 15.** Retain the current trading hours restrictions, (but apply to all licenses including small bars), to reflect the evidence that increased trading hours increases the risk of alcohol and gambling harm. Maintain the six-hour closure requirement without exemptions, and the current trading hours restrictions for Sundays and some public holidays.

**Recommendation 16.** Implement the proposed change of restricting access by children or young people to bottle shops and the liquor sales areas of supermarkets, without a responsible adult. Retain restrictions on access to hotels and club bars by children and young people, to recognise the risks to children and young people, including exposure to alcohol promotion in licensed venues.

## **Support clinically supervised sobering up services**

**Recommendation 17.** Retain the requirement that licensed venue staff ask a person who is intoxicated to leave the premises. Abandon any moves to create areas within licensed venues where people who are intoxicated can remain at the licensed venue.

**Recommendation 18.** Investigate the funding of suitably qualified and experienced alcohol and other drug services, in consultation with alcohol and other drug services, to run safe, cost-effective, clinically supervised sobering up services.

## **Keep up with rapidly changing environment**

**Recommendation 19.** Include online alcohol sales and delivery outlets as a distinct license category, with community consultation requirements and risk-based fee calculations to accurately reflect retail outlet location density.

**Recommendation 20.** Limit deliveries to between 10am and 10pm to reduce risks of alcohol-related family violence and suicide which peak late at night in the home.

**Recommendation 21.** Introduce a delay of two hours between purchase and delivery of alcohol, to stop rapid supply of alcohol to people who may be intoxicated or dealing with alcohol dependence.

**Recommendation 22.** Ban predatory digital marketing by alcohol companies in NSW that target and market to people in NSW who are vulnerable. These predatory tactics include incentives, bulk purchase discounts, delayed payments, and direct prompts such as push notifications or 'buy now' buttons.

**Recommendation 23.** Require NSW alcohol retailers to display on their websites that target NSW localities, a prescribed warning statement about the risk of harm from alcohol, and a prescribed pregnancy warning label with a link to the Australian guidelines to reduce health risks from drinking alcohol.

**Recommendation 24.** Retain the requirement to hold a liquor licence to sell no and low alcohol products. Restrict supermarkets and convenience stores, from selling no and low alcohol products to stop alcohol branding and marketing from reaching unlicensed environments, and to take a precautionary approach to protecting children and young people.

### **Reduce the risk of alcohol harm - the purpose of liquor licensing**

**Recommendation 25.** Prioritise harm reduction in liquor licensing above other considerations, by amending the Liquor Act to make *'minimising harm from the sale, supply and use of alcohol'*, the *primary Object* to prioritise public health and community interests.

**Recommendation 26.** Amend the Liquor Act to define harm from alcohol more accurately to include the following harms relating to the sale, supply and use of alcohol: the risk of harm to children, and communities; the adverse economic, social and cultural effects on communities; the adverse effects on a person's health; alcohol dependency; family violence and interpersonal violence.



# 1. Strengthen community participation

## Make liquor licensing ‘community-centric’

This part relates to **Section 1. Why are we releasing this discussion paper? and Section 8. Customer-centric, risk-based licensing.**

Alcohol is the most common drug that people access treatment and support for and is the fifth greatest risk factor contributing to the burden of illness and deaths. Each day in NSW, alcohol is responsible for 47 emergency department presentations, 119 hospitalisations and five deaths.<sup>1</sup> A quarter of all adults in NSW use alcohol at levels placing their long-term health at risk, and just under one quarter of adults drink more than four standard drinks on a single occasion, placing them at a high immediate risk of harm.<sup>2</sup> People experience a large number of associated harms such as injury, liver disease, cancer and mental health problems.

Due to the significant harm that alcohol causes, the NSW Government should prioritise community wellbeing, placing communities at the centre of liquor licensing processes. The NSW Liquor Act states that liquor licensing must be “consistent with the expectations, needs and aspirations of the Community”.<sup>3</sup> This means that liquor licensing must be ‘community-centric’, prioritising the voice of the community in its consultation processes. It must also implement conditions, and approval and enforcement processes, that are evidence-based and minimise alcohol harm in the community.

The Discussion Paper often refers to the ‘design principle’ of putting the ‘customer’ at the centre or being ‘customer-centric’. However, the ‘customer’ being referred to is exclusively the License Applicant, (Section 10.1 even uses “Applicant-centric”), not the impacted communities.<sup>4</sup> Framing liquor licensing as ‘Applicant-centric’, prioritises liquor licence Applicants over the expectations, needs and aspirations of the community. This is not consistent with the Liquor Act stating that liquor licensing must be “consistent with the expectations, needs and aspirations of the Community”. This prioritising is reflected in proposals in the Discussion Paper that reduce community consultation, and harm minimisation measures.

**Recommendation 1.** Adopt a *community-centric* approach to liquor licensing, that prioritises the voice, expectations, needs and aspirations of the community, to minimise harm from alcohol to the community.

## Improve the community engagement process

This part relates to **Section 4.3 A single licensing consultation process for medium to higher-risk liquor licences** and Question 6.

### Effectiveness of current Community Impact Statement (CIS) process

A Community Impact Statement (CIS) is an Applicant-developed summary that describes potential harms that a liquor licence might have in a locality.<sup>5</sup> There are acknowledged shortcomings with the current CIS process that favour the Applicant over community stakeholders. The current CIS format does not accurately or transparently assess or report community impact. The CIS stakeholder requirements do not effectively or transparently engage with community stakeholders, meaning that community concerns can be overlooked.

Specific issues that highlight how the CIS is not fit for purpose include:

- The Applicant can summarise community consultations thereby removing the voice of the community stakeholders. There is no way to know if it is complete, or if information has been excluded. As the Discussion Paper says: “Some community members may also feel that



*their feedback is not going directly to licensing decision-makers through this process - rather it could be shaped or filtered by whoever prepares the CIS.”*

- The Applicant-developed CIS is required to be published on the Liquor and Gaming Noticeboard, along with the liquor licence application. However, this publication does not include all the relevant documentation. It is not currently a requirement that it include the community stakeholder submissions in full, or the Social Impact Assessment (SIA) decisions made by local council or the courts in the planning and development stage.
- The Discussion Paper says: *“Due to the nature of the CIS consultation requirements, many applicants engage legal firms to manage the process on their behalf, often at great cost. The use of legal firms to run community consultation activities can be perceived as intimidating to some members of the community, which may discourage participation in some cases.”* It is also a great cost to community members to engage with this process. They have less resources available to them, than the Applicants, in whose favour this process is being simplified for.

### **Proposed reforms to community consultation**

Reform of the consultation process must ensure that it addresses transparency and objectivity, gives communities a voice, and sufficiently resources community stakeholders, assessors and regulators. The proposed solution of removing the mandatory Community Impact Statement (CIS), does not match the stated problem. If engaging legal firms can be perceived as intimidating by community members, then the intimidation must be removed from the process, not the community members. The problems with the CIS are not solved by removing the mandatory pre-application CIS requirements altogether, but by fixing the problems with the current process.

There are some positive changes to the consultation process suggested in the Discussion Paper. This includes aligning liquor licensing better with development application planning processes, (which would require improvements to both processes). Some of the suggestions regarding enhanced notifications could improve transparency and the suggestion to improve inclusion and diversity of consultation is also welcome.

However, other changes to community consultation process in the Discussion Paper will not improve transparency, access or engagement. The proposal for a *“single licensing consultation process”*, does not simply combine the pre-application CIS with the post-application public consultation. It also halves the mandated period from 60 days to 30 days in which the community has the opportunity to be involved. It also reduces the required document to a *‘risk of harm and impact statement’* developed by solely the Applicant with no input from the community.

The Discussion Paper says the current CIS process provides a forum for *“constructive engagement between applicant and community”* prior to lodging the application. It *“strongly encourages”* Applicants to engage with the community prior to lodgement, and even suggests requiring listing these stakeholder engagements and recording written confirmation of notices. As this stage of consultation is highly valued, and there is no reason to remove it from the mandatory requirements.

The purpose of a consultation process is to engage with stakeholders to allow them to voice their concerns, not for the Applicant to ‘anticipate’ what potential negative community impacts might be. Simply removing the CIS will not improve community consultation and it will not assist the Independent Liquor and Gaming Authority (ILGA) in identifying the impact of a licence on the community. There is a conflict between the Applicant anticipating risks of harms and their primary aim to get the licence application approved.

## A more transparent and comprehensive community consultation process

Liquor licensing requires an effective community consultation process where all impacted members of the community have a voice on liquor license applications. Enhancing community engagement and input in liquor licensing, serves to make policy decision-making more responsive to community concerns about alcohol harm. Community participation in licensing matters is a function of democratic governance and procedural fairness, informing impacted communities of licence applications, and supporting them to exercise their rights to object or lodge complaints.

The effectiveness of public participation in government regulatory processes relies on the relevant authority establishing genuine engagement processes. These should include elements from across the Public Participation Spectrum (inform, consult, involve, collaborate and empower).<sup>6</sup> For liquor licensing, this means that engagement with community stakeholders must include early, informed, transparent, and equitable participation.

Effective consultation enables local autonomy and informed community choice in the direction of local health, safety and amenity issues related to alcohol. For communities to effectively engage in licensing matters, they need to be appropriately informed and supported, processes need to be transparent, and the regulators need to be sufficiently resourced and act with the highest levels of objectivity and impartiality.

### Case Study – Woolworths’ failure to consult with Darwin communities<sup>7</sup>

An example of the central importance of adequate community consultation in liquor licensing, is Woolworths abandoning their plans in 2021 to build an alcohol megastore near the dry community of Bagot in Darwin. Community members, health and community organisations raised concerns with the proposal for five years. A review panel that investigated the consultation process recommended that the development should not proceed because local communities, including Aboriginal and Torres Strait Islander groups, had not been adequately consulted. The majority of people to whom the review panel spoke expressed strong concerns about the proposal.

Some recommendations of the review panel’s report to Woolworths Group are relevant for all liquor licensing community engagement:<sup>8</sup>

- **Engagement and consultation.** Take a more inclusive approach to identify, engage and listen to a wider range of stakeholders concerned with the impacts of new proposals – particularly, but not necessarily exclusively, when it comes to the sale of alcohol in communities with a strong First Nations presence. Takes steps to provide multiple direct and indirect channels for stakeholder engagement.
- **Considering harm in operational decision-making.** Revise operational decision-making processes in relation to future liquor outlet proposals to explicitly consider the social and health impacts on the at-risk groups and communities such as First Nations peoples before progressing any such new proposals.
- **Engagement with harms beyond responsible service.** Incorporate into strategies and business analysis frameworks a more comprehensive account of social and community impacts beyond the point of sale and throughout all stages of the business life cycle. This should include ongoing engagement with and listening to health experts and considering how the alcohol industry and health experts can better work together.
- **Further the evidence base.** Takes steps to improve the overall understanding and evidence base of the implications of alcohol sales and take a leadership role in supporting research to answer the question of whether new liquor outlets increase the volume of alcohol consumption in the community.

The Discussion Paper suggests Applicants use a template to record their responses to submissions made during the consultation to improve transparency. This will be more transparent and more effective if the community submissions and the Applicant's responses are both published in full, in a timely fashion, on the Noticeboard. This should include all supporting documentation including the Social Impact Assessment (SIA) and any decisions made by local council or the courts in the planning stages of the application. Consideration should also be given to making it a requirement for the Applicant to demonstrate that they have provided genuine responses to submissions, and that this directly impacts the licencing decision-making process.

The Social Impact Assessment (SIA) requirements under the *Environmental Planning and Assessment Act* for development application (DA) assessment, have more detailed requirements than a CIS. Applicants lodging a liquor license application must also go through a DA assessment with their local council. Combining liquor licensing (LL) and DA documents and processes, could improve community consultation if the best practice processes are included for both.

#### **Suggestions for a single SIA for both DA and LL<sup>9</sup>**

- Mapped identification of the current and/or anticipated customer catchment of the premises if approval is granted. A customer catchment will often be different from suburb or LGA boundaries and the impact assessment should not be artificially restricted or shaped to these areas. For the purposes of a LL the customer catchment would equate with the locality of the premises.
- A social profile of the community in the customer catchment – using social data relevant to the purpose of the LL application.
- The crime profile of the customer catchment not limited to crimes which the police have recorded as alcohol-related.
- The Socio-Economic Indexes for Areas (SEIFA) score of relative socio-economic disadvantage – as the index most relevant to alcohol-related harm.
- The health profile of the customer catchment as available from public and/or published sources including ambulance data and emergency department statistics.
- Assessments of risks of harm supported with reference to recent research findings. L&G NSW guidance should state that unsubstantiated claims will not be given credence.
- Proposed mitigations should meet the same criteria as those operating in planning practice, namely, that mitigations should be tangible, deliverable by the licensee and durably effective. These criteria established in the NSW Land and Environment Court,<sup>10</sup> also appear in the Department of Planning's 2021 SIA Guideline.<sup>11</sup>

**Recommendation 2.** Strengthen the transparency of the community consultation process, by publishing all relevant documents on the Noticeboard, including community submissions and Applicant responses. This will help to ensure transparency of the process and ensure community concerns are genuinely heard and prioritised.

**Recommendation 3.** Combine the best practices of Development Application and Liquor Licensing processes into a joint Social Impact Assessment, with an improved list of requirements, and retaining the 60-day consultation period. This will improve the accuracy and completeness of the assessment process and ensure community stakeholders have time to engage.

## **Support communities to have a genuine voice with more inclusive consultation**

This part relates to Sections **3.2 A single-entry point to commence liquor and planning applications**, **4.1 Enhanced, more accessible public consultations** and **8.2 Risk-based application and community consultation processes** and to Questions 3, 7 to 9, 11, 12, 32 and 33.

### **Targeted support with an independent support for community stakeholders**

Communities need sufficient support services to adequately engage in liquor licensing decisions and have their concerns heard. The purpose of community consultation is to help the Independent Liquor and Gaming Authority (ILGA) to understand the impact a licence will have on the local community. However, Applicants need only engage with very few community members and if communities are unaware of the application and miss the opportunity to provide a submission, they have no claim to appeal an ILGA decision.

The current process already has a power imbalance that favours corporate interests over community interests, with the Discussion Paper prioritising making the licensing processes, (including consultation), simpler, easier and quicker for the for-profit business Applicants. Businesses 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. There is no targeted support for communities interacting with liquor licensing or planning systems. This results in unsuccessful but valid objections and complaints, or community members not engaging with these systems at all.

In recognition of the substantial barriers the community face in effectively engaging with the licence application process, independent support should be available for communities who wish to engage in liquor licensing processes, and this should be adequately resourced. An advisory and central information service is needed, with staff that have appropriate skills and expertise in alcohol-related planning and licensing systems, including legal skills and an understanding of community needs and expectations. This would support individuals and communities in navigating and interacting with the liquor licensing system.

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

The current CIS process attempts to engage community participation, but there is a lack of transparency surrounding processes and notification, making participation extremely difficult. Public notice is only required by certain Applicants and only given to select groups.

### **Identifying and engaging a more inclusive list of impacted stakeholders**

#### **More appropriate radius of impact**

The local community is limited to being within a 100 metre radius of the proposed premise and only Category B Applicants are required to notify these individuals.<sup>12</sup> Although the locality of a building can be described in metres, alcohol-related trade is mostly described in kilometres.<sup>13</sup> In the case of

off-licence premises, catchment areas from which premises may draw customers can extend several kilometres from the positioning of a ‘big box store’, meaning the impact of a liquor licence extends well beyond 100 metres of the premises.

The NSW Land and Environment Court considers locality as a relative concept in that “*the nature of the development and its impacts will influence the scope of the locality to be considered*”.<sup>14</sup> Therefore, the primary trade area for a licensed premise should be considered as the locality for potential impact. Licensees will have already assessed their primary trade area when considering the financial viability of their business model.<sup>15</sup> Changing locality to be the primary trade area will therefore pose no extra onus on Applicants. It will also make the licence application process more transparent by increasing the number of community members within the area who are notified.

In the current system, a concerned citizen or community group may not be ‘identified or referred’ to the Applicant by ILGA, or the notice may not be properly affixed to the premises or in plain view for the general public. When this is the case, concerned citizens will neither be consulted nor made aware of the licence application and of their right to object to the application. Increasing the locality area of neighbouring premises to the primary trade area will help reduce the number of people overlooked in the consultation process. A general rule for primary trade could be considered five kilometres within urban areas and 20 kilometres in regional and rural areas. This area captures all potential local customers, local businesses and concerned community members.

The suggestion for interested community stakeholders to be provided with ‘*progress alerts*’ as part of the Application Tracker is more transparent and is welcomed. The suggestion that a register of special interest groups be automatically notified is also welcomed, provided that is done in a culturally informed manner, suited to the specific special interest groups, (including adequate timeframe notice, and preferred communication method). The current consultation lists for both categories of CIS are narrow and should be expended to include a larger network of social, health and community stakeholders. Further, mere notification is not genuine engagement. Genuine community engagement facilitates active participation and empowerment by proactively seeking out stakeholders early and providing opportunities for them to make informed and supported contributions.

A risk-based licensing (RBL) system means that licensing applications are assessed, and then ratings and fees calculated, using evidence-based risk factors. It does not mean that access to community consultation is limited by a risk rating determined by the Applicant. A risk rating system, prior to community consultation, cannot restrict or pre-determine the appropriate timeframes or access to community consultation, as the consultation must inform that risk assessment. Risk assessment cannot be a linear process, it needs to be iterative where community consultation impacts risk assessment, which is then adjusted and communicated back for further community consultation.

**Recommendation 4.** Provide resourcing for targeted and independent support for members of the broader community, (especially residents, community and health groups, service providers and businesses impacted by increases in liquor outlet density), to genuinely navigate and engage with liquor license application processes.

**Recommendation 5.** Include engagement with all relevant stakeholders such as people with lived experience, researchers and harm reduction policy experts, and public health bodies, to ensure the consultation process is informed by relevant expertise of alcohol harm.

**Recommendation 6.** Maintain an open and diverse community consultation process for all applications to ensure community consultation informs all risk assessments. Do not restrict consultation timeframes or access based on an Applicant-assessed risk rating.

## 2. Protect the community with evidence-informed, risk-based licensing

### Improve risk-based licensing with genuine harm reduction measures

This part relates to **Sections 7. Ongoing licensing reform options**, and **9.4 More support for producers – brewers, distillers and wineries** and to Questions 20 to 25, 48, 59 and 60.

The purpose of risk-based licensing (RBL) is to align licensing fees and conditions with evidence of the risks of alcohol harm. A benefit of the current system is that separate liquor licences and classes recognise the range of risks of harm of different venues, with different operating conditions. For example, bars are rated as higher risk than restaurants. In addition to venue type, risk of harm associated with licensed venues also relates to trading hours, patron capacity, location (density and proximity), and compliance history. In the ACT, RBL was found to contribute to a decline in the number of alcohol-related offences by 25 per cent.<sup>16</sup>

#### Number of liquor licenses and the ‘licence-builder’ approach

Any reduction in the number of liquor licences and classes, including through the proposed “*licence-builder*” model with endorsements, must not reduce the licence conditions for each category of risk. The example list provided in the Discussion Paper on page 27, that a single license could cover, identifies several types of licence conditions which do not all have an identified risk rating in the RBL system separate to the business type. This means that new operating permissions will be added to a venue, without adding any new conditions to cover those increased risks.

A priority of any system should be ensuring that the risk of harm from alcohol is not increased by such changes. Every ‘simplification’ that reduces regulatory oversight favours Applicants over reducing the risk of alcohol harm in the community. The proposed ‘*licence builder*’ does not adequately address the potential for increased risk of harm when changing licence conditions. The diversity of licenses needs to be fit for its purpose to regulate licensing to reduce risk of harm from alcohol.

The license conditions that exist regarding how they sell and supply alcoholic products for use off-premises, recognises the increased risk of off-premise use of alcohol. There is no evidence that the risk of alcohol harm is diminished because the off-premises supply is promotional (Section 9.4), is temporary (Section 10) or is in the ‘*public interest*’ (Section 10.2). ‘*Public interest*’ is mostly referenced in the Liquor Act to address the risk of alcohol harm with increased restrictions. If ‘*public interest*’ is used to rollback regulatory oversight, there needs to be additional evidence-based harm reduction measures to offset the increased risk of alcohol harm.

Specific business structures of alcohol production, wholesale supply or retail sale, must not become loopholes in liquor licensing regulation. Any rollback of regulatory oversight must include evidence-based harm reduction strategies to offset the increased risk of alcohol harm.

An existing license being merged or transitioned to a ‘*licence-builder*’ approach with endorsements, does not provide an evidence-based justification that associated risks of harms are also able to be addressed in a ‘modular’ way. Risk of alcohol harm is complex; it is not linear or modular. Risk of harm is established through careful research of implemented policy outcomes. Licence conditions should be based on a researched assessment of risk.



## Evidence to establish risks of harm for different licence types

Any substantive change to the licencing conditions, must include evidence-based harm minimisation justification or mitigation measures put in place to offset the erosion of measures to reduce alcohol harm. Evidence must be provided showing substantive changes to the licence conditions have no negative impact on the risk of harm before changing the licence conditions.

The Centre for Alcohol Policy Research at La Trobe University is currently analysing associations between alcohol outlet density and domestic and non-domestic assaults in NSW, for the Independent Liquor and Gaming Authority (ILGA).<sup>17</sup> Results of this analysis form part of the evidence base for this liquor licensing reform consultation.

**Recommendation 7.** Ensure that any new endorsements or licensing options added to expand business operations within a *'licence-builder'* model, also adds additional community consultation requirements and evidence-based harm minimisation measures as conditions.

**Recommendation 8.** Commission independent research to determine the associated risks of harm from alcohol of different licence types and their conditions, before reducing or changing the number of licenses and subclasses. This would be similar research to the current Centre for Alcohol Policy Research investigation for the Independent Liquor and Gaming Authority.

## Ensure regulatory oversight for all applications before approval

This part relates to **Section 8.2 Risk-based application and community consultation processes**.

The purpose of a risk-based licensing (RBL) system is to ensure that license applications are assessed against the risk factors of harm from alcohol. The purpose is not to *'fast-track'* or grant *'interim approval'* to any applications that have been self-assessed as *'low risk'*.

The proposed risk level ratings of high, medium and low, are self-allocated, primarily according to primary business activity, without regulatory oversight. However, assessing genuine risk in licensing applications is an iterative process. An accurate risk rating cannot be allocated prior to community consultation and must involve assessing all risk factors (trading hours, patron capacity, location and compliance history), not just business activity.

**Recommendation 9.** Require all applications to have regulatory oversight before granting approval to operate, so that community input can be assessed alongside all risk factors (trading hours, patron capacity, location and compliance history). Do not provide *'interim approval'* for any applications, *'low-risk'* or otherwise.

## Maintain enforcement action of penalty infringement notices

This part relates to **Section 8.4 Improvement notices as a 'new' enforcement option** and to Question 34.

Penalty infringement notices are a key tool in liquor licensing regulation, that recognise the seriousness of license breaches, that can lead to increased risk of alcohol harm. Using an *'Improvement Notice'* to allow a venue to continue trading, while they rectify a breach, is not an additional enforcement option. (The Discussion Paper clearly says *'rather than'* not *'in addition to'*, being issued with a penalty infringement notice.)

Replacing some penalty infringement notices with improvement notices would be a watering down of the existing enforcement actions. Infringement notices should continue to have existing enforcement actions enforced unless expert evidence is provided that associated risk of harms has been mitigated in some way by specific harm minimisation measures. Allowing some licensees to

continue to operate as normal without penalty, while in breach of their license, is procedurally unfair and reduces the effectiveness of penalties as incentive to comply with license conditions.

**Recommendation 10.** Maintain the enforcement action of penalty infringement notices, to preserve the integrity and harm reduction value of infringement notices. Do not allow breached venues to use 'Improvement Notices' to continue trading while in breach of their license.

## Review adequacy of fees for all licenses, based on all risk factors

This part relates to **Section 8.7 Risk-based liquor license fees** and to Questions 38 and 39

### Contributing to the cost of alcohol harm

A risk based-licensing (RBL) scheme provides a mechanism to contribute to recovering some of the costs associated with alcohol harm. These costs relate to law enforcement, and the provision of services that respond to alcohol harm such as ambulance, police, emergency departments, hospitals, shelters, social workers, and Alcohol and Other Drug (AOD) treatment services. NSW liquor licensing revenue was estimated in 2018 to be just \$17 million.<sup>18</sup>

A collaboration between the University of Sydney, Deakin University, the Australian Prevention Partnership Centre and NSW Health has recently developed an interactive model for estimating the economic costs of alcohol-related harms in NSW.<sup>19</sup> 'The Alcohol-Related Harms Costing Model' (ARHCM) can calculate costs for the whole of NSW or for specific Local Government Areas (LGAs). The table below indicates that the estimated costs of alcohol-related harms for the whole of NSW for 2018-19 was \$11.52 billion.

The evidence-based model is intended to allow researchers, economic modellers and L&G NSW / ILGA to more accurately estimate and factor in potential consequences of new licences or other policy changes for the NSW population. This means that it can be used by the NSW Government to assess the costs of various alcohol policy initiatives. It should also become a standard practice within L&G NSW / ILGA licensing processes to measure the potential cost impact of a proposed licensed venue within in a local community.

#### Estimated alcohol-related costs for NSW in 2018-19

Cost category	Amount
<b>Tangible costs</b>	
Premature mortality	\$1,153,855,109
Hospital morbidity	\$257,430,314
Other health costs	\$15,623,437
Crime	\$394,012,585
<b>Total tangible costs</b>	<b>\$1,820,921,444</b>
<b>Intangible costs</b>	
Premature mortality	\$9,604,000,000
Victims of crime	\$95,602,161
<b>Total intangible costs</b>	<b>\$9,699,602,161</b>
<b>TOTAL COSTS</b>	<b>\$11,520,523,605</b>

### Liquor licensing fees as a harm reduction measure

While RBL can contribute to recovering costs associated with managing high levels of alcohol use environments and dealing with the consequences of alcohol use, it can also contribute to reducing alcohol harm. RBL can lead to improved business practices by providing an incentive to minimise the risks associated with a venue's operation. The fee paid by a licensed venue should be commensurate

with the level of risk posed by the venue, ensuring that the venues that pose the greatest risk to the community pay the greatest share of the costs.

The effectiveness of RBL is dependent on the level at which fees are set. If set too low, or without significant difference between the risk levels, the ability of RBL to have an impact will be weakened. The level of licence fees in RBL must genuinely reflect the risk factors of harm from alcohol, without discounts or loopholes. Primary business activity and trading hours are just two of the risk factors of harm from alcohol. The Discussion Paper suggests basing the calculation of fees on just these two factors. However, the calculation of risk-based fees must be based on the full set of the different risk factors, including patron capacity, location (density and proximity), compliance history, as well as business activity and trading hours.

Incentives in the form of discounted annual liquor fees, significantly undermine RBL, and must be resisted. The current RBL fees already provide significant discounts by adding risk loading elements only when venues have been non-compliant. No fees should be discounted, delayed, or cancelled unless evidence is provided of a reduction in risk of harm from alcohol.

**Recommendation 11.** Ensure that license fees adequately reflect all risk factors of each class of license, that they contribute to the costs associated with alcohol harm, and that they act as an incentive for licensees to reduce the risks of alcohol harm.

### 3. Include all alcohol harm risk factors in risk-based licensing

#### Retain and improve location and capacity as risk factors

This part relates to **Section 8.8 Simplified compliance risk loadings** and to Question 40.

Risk-based licensing (RBL) must incorporate all evidence-based risk factors, (trading hours, patron capacity, density and proximity, and compliance history).

#### Patron capacity as a risk factor

A larger patron capacity or venue size means larger numbers of people using alcohol, and a greater area to monitor. Patron capacity can impact on patron interaction, aggression and levels of intoxication in a venue. Reducing the tiers of patron capacity to just larger or smaller, would reduce the effectiveness of the license to regulate this risk factor. Currently, 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.

As the Discussion Paper notes, Councils will sometimes have different patron capacity requirements to L&G NSW or ILGA. However, any flexibility between Councils capacity requirements and L&G NSW or ILGA capacity requirements, must apply whichever is the lowest capacity limit, to maintain the same level of risk of alcohol harm. This process will be better supported by retaining the four tier levels.

#### Location (density and proximity) as a risk factor

The Discussion Paper proposes removing the risk category of 'Location' (which currently only identifies whether an application is in the Sydney CBD, Kings Cross or elsewhere). It suggests that this will put all venues on an *'even footing'*. This falsely frames location as if it is an issue of procedural fairness, rather than as a risk factor of alcohol harm. This provision does not currently acknowledge the evidence of the impact of outlet density or proximity to other outlets, however it remains the only provision relating to location and despite its limitations, should not be removed.

This proposal would also overturn the recent Liquor Amendment (Night-time Economy) Act 2020<sup>20</sup> provision to replace the Sydney CBD and Kings Cross 'licence freeze' with a *'Cumulative Impact Assessment'* framework for managing the density of licensed premises.<sup>21</sup>

There is substantial evidence to demonstrate that the density of liquor outlets contributes to an increase in alcohol harm.<sup>22,23</sup> A study by the NSW Bureau of Crime Statistics and Research found that *"the concentration of hotel licences in a local government area, particularly at higher density levels, was strongly predictive of both intimate partner and non-intimate partner assault rates"*.<sup>24</sup>

Additionally, the World Health Organization (WHO) has highlighted that neighbourhoods which have higher densities of alcohol outlets (both on- and off- license) 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.<sup>25</sup>

**Recommendation 12.** Incorporate all risk factors of alcohol harm into the calculation of risk ratings and license fees, to ensure that risk-based licensing accurately reflects the risk of alcohol harm. These include business activity, trading hours, patron capacity, location (density and proximity), and compliance history.

**Recommendation 13.** Retain the current four tiers of patron capacity risk loading (and associated fees) and apply to risk ratings from the outset (not just when non-compliant), to properly recognise the risks of alcohol harm associated with increasing patron capacity.

**Recommendation 14.** Retain 'Location' as a risk category, expand it to include both density and proximity, (not just Sydney CBD and Kings Cross), and include small bars in the risk assessment, to accurately reflect the risks of venue density and proximity.

## Maintain trading hours' restrictions, including Sundays and six-hour closure

This part relates to **Sections 9.1 Standard trading hours across all days of the week** and **9.3 More support for live performance, creative and cultural spaces**, and to Questions 41, 42 and 46.

The evidence regarding to the impact of trading hours on the risk of alcohol harm (including injuries, hospitalisations, and violence), is strong, well-established, and current.<sup>26</sup> Restricting trading hours of licensed venues reduces rates of alcohol-related harm and extending trading hours increases rates of alcohol-related harm. The effectiveness of this policy instrument is strong enough for restrictions on late trading hours of bars and hotels to be recommended by researchers as a key part of reducing late-night violence in Australia.<sup>27</sup>

The Discussion Paper suggests adopting one standard trading period for all retail liquor sales from 5am to midnight on all days of the week. This would extend trading on Sundays and some public holidays from the current ordinary trading hours of 10am until 10pm. Extending trading later at night has been shown to increase alcohol harm and gambling losses. A recent news report found that the number of pubs and clubs seeking approval for poker machines to be played between midnight and 4am (the danger hours for problem gamblers) has spiked.<sup>28</sup>

**Recommendation 15.** Retain the current trading hours restrictions, (but apply to all licenses including small bars), to reflect the evidence that increased trading hours increases the risk of alcohol and gambling harm. Maintain the six-hour closure requirement without exemptions, and the current trading hours restrictions for Sundays and some public holidays.

## Maintain rules for restricted access by children and young people

This part relates to **Section 9.2 Simpler, enhanced protections for minors on licensed premises** and to Questions 43 and 44.

Children and young people are particularly vulnerable to harm from alcohol for multiple reasons. They are experiencing profound physical and emotional changes, are heavily influenced by role models, may engage in increased risk-taking, and their brains are still developing and so are sensitive to even low amounts of alcohol. The Discussion Paper makes a positive suggestion to prevent children or young people from being in bottle shops or the liquor sales areas of supermarkets without a responsible adult. We support this recommendation.

The Discussion Paper suggests that these proposed changes to restrictions on access for children and young people are '*simpler*' and more '*consistent*'. These change the restrictions on access for children and young people from separate rules for different licenses, to one rule "*minors must be accompanied by a responsible adult whenever liquor is being sold/supplied under a licence*" with a list of exceptions to that rule. The net result of these changes is a stricter rule for bottle shops, but laxer requirements for hotels and club bars, where children and young people would now be permitted (with a responsible adult). This represents a winding back of current regulatory provisions restricting access for children and young people in hotels and club bars.

The risk of alcohol harm for children and young people that venue restrictions address, is not confined to just protecting them from direct access to alcohol. These access restrictions also address the risk of exposure to alcohol promotion which is not permitted in other contexts, such as in advertising and social media.

**Recommendation 16.** Implement the proposed change of restricting access by children or young people to bottle shops and the liquor sales areas of supermarkets, without a responsible adult. Retain restrictions on access to hotels and club bars by children and young people, to recognise the risks to children and young people, including exposure to alcohol promotion in licensed venues.



## 4. Support clinically supervised sobering up services

### Implement evidence-based harm reduction measures for people who are intoxicated

This part relates to **Section 9.7 Enhancing approaches for managing intoxicated patrons** and to Questions 53 and 54.

#### Requirements regarding people who are intoxicated

Under the NSW Liquor Act, licensed venues must refuse service to any person whom they have reasonable grounds to form a belief is intoxicated as a result of alcohol use, and must also ask them to leave the premises. Fines, higher licence fees, and possible suspension or cancellation of a licence can apply where alcohol is served to an intoxicated person. If they refuse to leave, licensees are encouraged to contact police for assistance in removing the person from the venue.<sup>29</sup>

Refusing the sale and supply of alcohol to intoxicated persons in licensed venues, and asking them to leave, is intended to minimise risks of harm from alcohol, including lowering the risk of alcohol-related violence and neighbourhood disturbance. This may help promote a safer venue for customers and staff, but it may not always help the intoxicated person, or other people at risk of harm. It may simply move the risk of harm on to another location, increase the risk of the intoxicated person coming into contact with criminal justice, and/or increase the risk of family violence.

#### Proposed ‘harm reduction area’

The ‘harm reduction area’ proposed in the Discussion Paper, within a licensed venue, is intended to be an alternative to asking an intoxicated person to leave the premises. The Discussion Paper states that people would remain in that area, “while” they are intoxicated. This area would be on the premises, in close proximity to the licensed area, where they could easily return to.

The ‘harm reduction area’ as described, is not a safe clinically supervised ‘sobering up service’, as supported by the National Drug Strategy,<sup>30</sup> and the National Alcohol Strategy<sup>31</sup>. The proposed ‘harm reduction area’ would be run by the Licensee, whose staff (often younger hospitality workers), would attempt to supervise the (predominantly male) intoxicated persons using Responsible Service of Alcohol (RSA). RSA is designed to remove, not manage, people who are intoxicated.

The Discussion Paper does not outline adequate detail about how a ‘harm reduction area’ would operate. The NSW Network of Alcohol and other Drugs Agencies (NADA) has expressed concern that the proposal does not explain how RSA-trained venue staff will be able to know if someone has become acutely unwell, or how to respond appropriately. Only suitably qualified and experienced alcohol and other drug services and professionals would be adequately trained to operate such a service. At the minimum, this would involve a health professional such as an AOD nurse.

#### Risk of harm to people in the licensed venue

Introducing ‘harm reduction areas’ will put both the person who is intoxicated and other people in the licensed venue at greater risk of harm. For the person who is intoxicated, they might experience alcohol poisoning or injury. Without medical supervision their situation could deteriorate quickly putting them at even greater risk. For other people in the licensed venue, it could lead to physical or verbal abuse.

The 2019 National Drug Strategy Household Survey found that one in five people (21%) had been verbally or physically abused or put in fear by someone under the influence of alcohol in the

previous 12 months – this equates to 4.5 million Australians. Of all people who had experienced physical abuse, one in ten (10.6%) had experienced harm that required hospitalisation.<sup>32</sup>

Creating these areas also places a significant responsibility on staff to supervise people and monitor their medical state. This is not what people who work in licensed venues are trained for and also places them at risk of harm.

### **Sobering-up centres**

Sobering-up centres are a diversionary alternative to a custodial response of being apprehended by police for public intoxication. The primary purpose of such centres is to provide a safe environment in which intoxicated people receive care and can sober up until the effects of the substance use have subsided. They can offer brief or early intervention services and referrals to other agencies.<sup>33</sup> They may provide a bed for the night, a meal, shower facilities and are monitored throughout their stay. (None of these services would be available in the proposed on-premise ‘*harm reduction area*’.)

Sobering-up centres have been established by various State and Territory Governments in Australia since the 1980s, including some run by Police.<sup>34</sup> However, the Police have been found to not have adequate training to be considered as experts in intoxication assessment.<sup>35</sup> Sobering up centres established by the NSW Government in 2013, were found to be ‘*haphazard and risky*’.<sup>36</sup>

Clinically supervised sobering-up centres would be safer and be more cost-effective than establishing a staff-supervised area in each venue. They can be centralised, so that each licensed venue does not divert existing staff. Many venues in an area could be covered by the one sobering-up centre. They would also be safer because the person who is intoxicated would still be physically separated from close proximity to the licensed area, (but not simply removed to the street or into police custody).

Information about these centres could be made available to all licensed venues in their area. Licensed venues could refer people who are intoxicated to the nearest centre, rather than just removing them. This is a preferred alternative to moving them to an inadequately supervised space in close proximity to the licensed area. If police do become involved in removing people who are intoxicated from venues, the sobering-up centres can be used as a diversionary alternative to incarceration.

**Recommendation 17.** Retain the requirement that licensed venue staff ask a person who is intoxicated to leave the premises. Abandon any moves to create areas within licensed venues where people who are intoxicated can remain at the licensed venue.

**Recommendation 18.** Investigate the funding of suitably qualified and experienced alcohol and other drug services, in consultation with alcohol and other drug services, to run safe, cost-effective, clinically-supervised sobering up services.

## 5. Keep up with rapidly changing environment

### Provide effective regulation of online sales and delivery of alcohol

This part relates to **Section 4.5 Tailoring consultation requirements for online liquor businesses** and to Question 10.

The expansion of online sales and delivery is making alcohol more accessible at home, increasing the risk of alcohol harms. Community consultation requirements for online sales and delivery services should be different, but not necessarily simpler. They should be fit for purpose. There are additional risks of alcohol harm from online sales and delivery and regulatory gaps remain. While these mobile services do not have a fixed location, they do contribute towards the availability of alcohol in a given geographic location. This means that they should have a specific license category and be considered in location (density) risk assessments of RBL.

**Recommendation 19.** Include online alcohol sales and delivery outlets as a distinct license category, with community consultation requirements and risk-based fee calculations to accurately reflect retail outlet location density.

The community expects that laws relating to alcohol keep up with the rapidly changing digital environment, to help protect people in the community from the risks of alcohol harm. The NSW *Liquor Amendment (Night-time Economy) Act 2020* included reforms in regulating online sales and delivery of alcohol, some of which have now also been implemented in Victoria and Western Australia. These reforms now need to be strengthened to close the remaining loopholes and keep up with the rapidly changing online environment. They need to address the increased risk of alcohol harm from late night delivery, rapid delivery, and predatory marketing.

### Late night delivery of alcoholic products contributes to family violence

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 per cent) of those being family violence, (including domestic and intimate partner violence).<sup>37</sup> Suicides and sudden or unnatural deaths involving alcohol predominantly happen at night, in the home environment.<sup>38,39</sup> The rapid delivery of alcohol to the home, late at night, 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.<sup>40</sup>

**Recommendation 20.** Limit deliveries to between 10am and 10pm to reduce risks of alcohol-related family violence and suicide which peak late at night in the home.

### Rapid delivery of alcoholic products fuels higher-risk alcohol use

‘Rapid delivery’ of alcoholic products means alcohol that is delivered within two 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.

FARE's 2020 Alcohol Poll found of people ordering rapid delivery, 38 per cent drank more than 10 standard drinks on that occasion.<sup>41</sup> A VicHealth survey found 77 per cent of rapid users would have stopped if rapid delivery was unavailable.<sup>42</sup> Combined with predatory marketing by alcohol companies that presents alcohol as a coping mechanism for stress,<sup>43</sup> rapid delivery is a serious risk for people dealing with dependence. A Sydney man died after Jimmy Brings delivered 3 bottles of wine a day to his house in the weeks leading to his death.<sup>44</sup>

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

**Recommendation 21.** Introduce a delay of two hours between purchase and delivery of alcohol, to stop rapid supply of alcohol to people who may be intoxicated or dealing with alcohol dependence.

### **Predatory marketing targets people who are vulnerable**

To protect people's health and privacy, alcohol marketing should not use history of purchasing to target people, must not encourage people to buy larger volumes of alcohol, and must prevent children being exposed to digital alcohol advertising. Predatory marketing by online alcohol companies targeting and marketing towards people who are most vulnerable must be banned. These strategies include purchase discounts, delayed payments, and direct prompts such as push notifications or 'buy now' buttons.

Online advertising of alcohol is not effectively age restricted, so children are engaging with alcohol marketing.<sup>45</sup> Young people's exposure to alcohol marketing increases their alcohol use and their likelihood to start drinking earlier.<sup>46</sup> Recent research shows social media platforms tag children as being 'interested' in harmful products such as alcohol products.<sup>47</sup> People living with alcohol dependency can have difficulty avoiding digital alcohol marketing,<sup>48</sup> and recent industry marketing during COVID-19 has framed alcohol as a way to cope with stress and isolation.<sup>49</sup> Research has demonstrated people who regularly use point of sale promotions typically purchase greater quantities of alcohol, including young people aged 16 to 25.<sup>50</sup>

Accurate and effective guidelines and warnings need to appear alongside alcohol companies digital marketing to ensure that people targeted by alcohol marketing are accurately informed about the risk of harm from alcohol.

**Recommendation 22.** Ban predatory digital marketing by alcohol companies in NSW that target and market to people in NSW who are vulnerable. These predatory tactics include incentives, bulk purchase discounts, delayed payments, and direct prompts such as push notifications or 'buy now' buttons.

**Recommendation 23.** Require NSW alcohol retailers to display on their websites that target NSW localities, a prescribed warning statement about the risk of harm from alcohol, and a prescribed pregnancy warning label with a link to the Australian guidelines to reduce health risks from drinking alcohol.

### **Provide effective regulation of no and low alcohol products**

This part relates to **Section 9.8 Alcohol-free beer and ultra-light beer and spirits** and to Questions 57 and 58.

No and low alcohol products are increasing in popularity and now make up 3.5 per cent of the global alcohol market, with the market value of these products growing from \$7.8bn in 2018 to just under \$10bn in 2021.<sup>51</sup> In Australia, the interest in no and low alcohol products is also growing, with a

forecast that the market will grow by 16 per cent between 2020 and 2024. In 2020, no and low alcohol products accounted for 5.3 per cent of the beer and cider market, but only about 0.5 per cent of the wine and 0.3 per cent of the spirits markets.<sup>52</sup> Despite this significant growth, no and low alcohol products are not subject to product-specific regulation.

L&G NSW have indicated that they intend to take a risk-based approach to no and low alcohol products.<sup>53</sup> However, they have also stated that “*regulatory action is unlikely to be taken in respect to their promotion and sale within unlicensed environments*”. Adopting a risk-based approach needs to take account of all risk factors, including the targeting of children and young people and the potential for no and low alcohol products to become ‘*additive*’, that is become an additional source of use, rather than a substitute for alcohol use.

### **Substitute or additive?**

No or low alcohol products often resemble alcoholic products in appearance, taste and smell. They are often packaged, labelled and marketed in the same manner as alcoholic products, with the same bottle shape, colours, label design as alcoholic products in a company’s range. In this sense, some no and low alcohol products can be seen as extensions of existing alcohol brands. It is important to establish whether no or low alcohol products act as a *substitute* (replacing an alcoholic product), or as an *additive* (when alcoholic product would not have been used).

The Liquor & Gaming NSW June 2022 report ‘*Are alcohol-free liquor products a gateway to alcohol consumption?*’ states “*the evidence identified was limited and not sufficient to inform policy*” and “*the literature was too scarce to confidently draw any conclusions on the impact of such products on health*”.<sup>54</sup> Based on this, a harm minimisation approach must be adopted to protect people from potential risks.

Evidence is not yet available to determine whether no and low alcohol products are being used in Australia primarily as substitutes or as additives. There is however, evidence from the United Kingdom that people perceive the targets for no and low alcohol products to be non-drinkers and non-drinking occasions – suggesting an additive effect.<sup>55,56</sup> There is also some evidence from the United Kingdom that people who drink alcohol may not consume less alcohol with low alcohol products as they drink more overall.<sup>57</sup> Studies of the marketing messages associated with no and low alcohol products suggest that they are being presented by the industry as additives.<sup>58</sup>

Several studies have found that the marketing for no and low alcohol products tends to suggest that these products should be used to enable additional drinking situations, such as at work or while playing sport, when traditionally alcohol has not been used.<sup>59,60</sup> Such marketing may serve to normalise the use of alcoholic products in these contexts. The marketing may also serve to position and reinforce drinking some form of alcoholic products – no, low or higher strength products as the social norm, and undermine the acceptability of not drinking.<sup>61</sup>

There have been anecdotal reports that low and no alcohol products that mimic the taste of alcohol have led people who have had an alcohol dependency in the past to relapse.<sup>62</sup> This is a risk that needs to be further explored.

### **Access for children and young people**

The National Health and Medical Research Council’s Australian Guidelines to Reduce Health Risks from Drinking Alcohol state “*To reduce the risk of injury and other harms to health, children and people under 18 years of age should not drink alcohol*”.<sup>63</sup> There is no restriction in the liquor licensing legislation on the sale of non-alcoholic beverages to children. (Although the NSW regulator does seem concerned about the way in which no and low alcohol products might act as a ‘gateway’ drink for children.)<sup>64</sup>

It has not been demonstrated that no and low alcohol products (which mimic alcohol in naming, appearance, smell, taste, packaging, labelling and marketing) are appropriate for sale to children. The harms related to the use of alcohol by children are known, but there is a lack of evidence about no and low alcohol products and their risks to children. Given this, a precautionary approach to the availability of these products to children would suggest that they are not supplied to children.

The availability of no and low alcohol products from unlicensed premises, such as convenience stores, through their packaging, labelling, in-store displays and other advertising material (in traditional or digital media), constitute a form of 'surrogate' or 'alibi' marketing for alcohol products. This is a marketing technique which occurs "*when companies use products other than alcohol to build alcohol brand familiarity and loyalty among consumers.*"<sup>65</sup> This is particularly the case where no and low alcohol products are extensions of existing alcohol brands, but it may also apply to all no and low alcohol products. A study from Thailand found that young adults who saw the logos of companies that sell both alcohol and non-alcohol lines of products were more likely to associate those logos with alcohol.<sup>66</sup>

Many no and low alcohol products use existing alcohol branding and allowing their sale in unlicensed settings means children will be exposed to this marketing. The proposal for L&G NSW to investigate complaints into appeals of these products to children and young people is important, but not a sufficient control. A more precautionary approach is needed to protect children and young people.

**Recommendation 24.** Retain the requirement to hold a liquor licence to sell no and low alcohol products. Restrict supermarkets and convenience stores, from selling no and low alcohol products to stop alcohol branding and marketing from reaching unlicensed environments, and to take a precautionary approach to protecting children and young people.



## 6. Reduce the risk of alcohol harm - the purpose of liquor licensing

### Make alcohol harm reduction the primary object of liquor licensing

This part relates to **Section 1. 'Why are we releasing this discussion paper?'**.

The harm caused by alcohol in the community is extensive, being a causal factor in more than 200 disease and injury conditions.<sup>67</sup> Alcohol is directly associated with increased risks of mental ill-health, suicide, family violence, (including domestic and intimate partner violence), cancer, Fetal Alcohol Spectrum Disorder (FASD) and significant social and economic losses to individuals and the community. (The current form of the Objects of the NSW Liquor Act only lists the harms from alcohol as being violence and other anti-social behaviour.)

The National Alcohol Strategy lists the following harms associated with alcohol:<sup>68</sup>

- **Increased burden of disease**—contributes to the burden of 30 diseases and injuries including alcohol use disorders, 8 types of cancer and chronic liver disease
- **a leading cause of drug-related deaths** —6,000 deaths estimated to be attributable to alcohol annually
- **significant contribution to violence and assaults**— including domestic, family, and intimate partner violence
- **high economic and service demand impacts on community services**— including policing, health, justice and local government services
- **contributing to avoidable injury and motor vehicle crashes**
- **cause of behavioural and neurodevelopmental challenges** - including Fetal Alcohol Spectrum Disorder (FASD) with life-long impacts; and
- **reductions in productivity** in the workplace.

There are significant risks of harms specifically associated with the products supplied by alcohol producers and retailers. As a result, their businesses cannot be adequately regulated by corporation and consumer protection laws alone.

The National Alcohol Strategy suggests many licensing strategies that can regulate the sale and supply of alcohol to reduce the risk of harms though controls on access and availability and safer drinking settings:

- Retail licensing schemes supported by strong enforcement and retailer education with effective policing and enforcement, including test-purchasing.
- Transparency of licensing decisions and the role of communities in contributing to these decisions as a way of preventing and minimising alcohol-related harms.
- Supporting licensing decision making and sharing of information on good practices to achieve outcomes that contribute to reducing or minimising alcohol-related harm.
- Registration and accreditation of licensees and key support staff, including minimum skills/knowledge assessment.
- Licensing procedures that consider known factors for risks and harms, eg. outlet density (limiting the density of licensed retailers and venues), and trading hours (cessation of sales at earlier times and lock out times).
- Promotion of responsible venue operations - require licensees to ensure staff are trained in the Responsible Service of Alcohol and monitor and support compliance with such standards.

Currently the Liquor Act does not include harm minimisation as a specific Object.<sup>69</sup> The Objects of the NSW Liquor Act currently include regulating and controlling *“the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community.”* Harm minimisation is only included as a requirement to secure the Objects of the Liquor Act, with particular regard to *“the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour)”*.

The Objects of the NSW Liquor Act prioritise business interests and, in many respects, hold conflicting interests between harm minimisation and enhanced competition and profitability. These conflicting interests challenge the licensing authority’s interpretation of alcohol harm risks when deciding on matters put before it.<sup>70</sup> The Liquor Act, as the key legislative instrument underpinning the entire liquor licensing regulatory framework, should have as its primary Object, *‘minimising harm from the sale, supply and use of alcohol’*.

In the Discussion Paper, the Design Principle of *“Effectively ‘managing’ the risk of alcohol-related harms”* does not adequately align with having due regards to *“the need to minimize harm”*. The Discussion Paper mentions harm minimisation in just two measures: the six-hour closure (with a suggested exemption) and preventing access for children and young people in some cases. This limited approach to minimising the risk of harm from alcohol is inadequate.

**Recommendation 25.** Prioritise harm reduction in liquor licensing above other considerations, by amending the Liquor Act to make *‘minimising harm from the sale, supply and use of alcohol’*, the *primary Object* to prioritise public health and community interests.

**Recommendation 26.** Amend the Liquor Act to define harm from alcohol more accurately to include the following harms relating to the sale, supply and use of alcohol: the risk of harm to children, and communities; the adverse economic, social and cultural effects on communities; the adverse effects on a person’s health; alcohol dependency; family violence and interpersonal violence.

## 7. Conclusion

FARE's submission has outlined how the NSW Government can adopt a '*community-centric*' approach to liquor licensing, in response to the Liquor Licensing Reform Options Discussion Paper. In considering changes to the Liquor Act, the NSW Government can choose to prioritise the health and wellbeing of the community. This submission provides recommendations on how the Government can do this.

The Discussion Paper provides some suggestions which can improve community engagement and access to licensing consultation. These include aligning liquor licensing with development application planning processes, enhanced notifications and improving the inclusion and diversity of consultation. These are welcomed.

However, many of the proposed changes in the Discussion Paper involve a winding-back of evidence-based harm minimisation protections and community access to consultation. These are proposed without evidence of impact on the risk of alcohol harm, and without adequate offsets of harm reduction measures.

Our recommendations outline steps the NSW Government can take to align liquor licensing with community expectations and to implement an evidence-based harm minimisation approach to liquor licensing. This will allow the NSW Government to prioritise the wellbeing of communities.

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