



Foundation for Alcohol Research & Education

# FARE response: Liquor & Gaming NSW consultation on same-day alcohol delivery

November 2019



**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. More than 5,500 lives are lost every year and more than 157,000 people are hospitalised making alcohol one of our nation's greatest preventive health challenges.

For over 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](mailto:info@fare.org.au).

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## Context

The NSW Government has sought feedback on proposed new laws for same-day alcohol deliveries. The Foundation for Alcohol Research Education (FARE) thanks the Government for taking action to improve the regulatory response to alcohol home delivery and is pleased to provide feedback on the discussion paper. As outlined in the discussion paper, the recent and projected growth in online sales and home delivery (OSHD) comes with a number of risks, and it is critical that regulatory controls keep pace with emerging market trends.

FARE is concerned that the discussion paper characterises an ideal approach as achieving balance between consumer convenience and risk mitigation. Alcohol is a harmful, addictive drug, and a group one carcinogen.<sup>1</sup> We should not approach this drug with a bias towards convenience. It should not be treated in the same way as fast fashion or fast food. Alcohol is a unique substance; owing to its great capacity for harm to the individual and those around them its availability is regulated by governments. Governments must recognise that in the case of alcohol, unlike fast fashion, there are public interest reasons why 'consumer demand' should not always be met.

Governments must also recognise that consumer demand is not organic; it is driven by marketing. Alcohol companies have expanded into this unregulated space to profit from impulsive urges to consume alcohol, and are now driving demand for these services through marketing to generate growth for their businesses. Measures to restrict marketing are part of the risk mitigation framework and must be included in the regulatory response.

The Liquor Act outlines that the Government has a responsibility to regulate the sale and supply of alcohol, while allowing the 'balanced' development of the liquor industry. This does not mean that every new idea and business model should be permitted simply because it has been conceived. Government must act to protect the community. Disruptive business models in OSHD present a new and unacceptable level of risk to the most vulnerable groups in the community:

- children under 18
- intoxicated people
- people who are dependent on alcohol or at risk of developing dependency
- people at risk of suicide
- people at risk of experiencing domestic violence
- children living in a household where family violence is present.

FARE's response to this consultation outlines these additional risks and ways in which they should be mitigated.

## Comments on discussion paper

FARE considers that there are a number of positive proposals in the discussion paper; however, in the context of the growth in OSHD, the proposals are insufficient to adequately account for the risks.

### The alcohol industry's response should not limit government's response

The discussion paper is framed and limited by the alcohol industry's self-regulatory code developed by Retail Drinks Australia which is a wholly inadequate response to the risks presented by OSHD. There is no justification for the Government response to 'complement the steps industry has already taken' rather than taking a principled starting point of harm minimisation. The alcohol industry has a vested interest in selling alcohol to make a profit. The alcohol industry engages in the same tactics as the tobacco industry to prevent or delay government regulation and undermine good public policy.<sup>2</sup> Self-regulation is an industry strategy to put in place minimal controls and prevent government regulation. It is not a legitimate route to harm minimisation.

## Compliance must be monitored and enforced by Liquor & Gaming NSW

Businesses' compliance with regulation should be regularly monitored by state and territory liquor regulators, including through the use of Controlled Purchase Operations. There must be clear and consistently applied penalties for non-compliance, including financial penalties.

To develop evidence-based regulatory responses, Liquor & Gaming NSW should require businesses to submit sales data and any other information needed to gain a clear understanding of the risks and trends of these business models.

## Regulation needs to catch up across the whole OSHD environment

While there are specific risks generated by same-day delivery of alcohol, regulation needs to catch up across the whole OSHD environment.

OSHD subverts established risk mitigation processes. Businesses should not be able to sell or supply alcohol to a person via OSHD who they would be prohibited from selling or supplying to in person. This includes:

- children under the age of 18
- intoxicated adults
- any individual prohibited by statutory regulation such as those listed on a banned drinker register.

The law recognises that certain groups of people are at heightened risk of alcohol harm and that it is inappropriate for businesses to sell alcohol to these groups. To maintain regulatory coherence and ensure the system is not undermined, these fundamental rules must apply regardless of the method of sale or delivery. The proposed measures should be broadened to cover all OSHD, not just same-day delivery.

## Age must be verified at point of sale

None of the proposed measures address age-gating at point of sale. This is particularly disappointing given that a recent audit of NSW licensees offering OSHD found that 60 per cent of websites did not even require date of birth at point of sale.<sup>3</sup> Furthermore, even when date of birth is required, many liquor retailers' websites allow the consumer to enter it manually, which is meaningless as an age-gating mechanism. FARE does not know of any Australian online liquor retailer that has effective age-gating at point of sale, where the birth date is actually verified.

Children under 18 should be prevented from consuming alcohol. This is one of the core principles of liquor regulation. Drinking alcohol from a young age can damage the developing brain.<sup>4</sup> Alcohol is an addictive psychoactive drug that diminishes responsible decision-making, leading to greater likelihood of risky behaviours, thereby magnifying the vulnerabilities of children. Alcohol contributes to the three leading causes of death among adolescents: unintentional injuries, homicide and suicide.<sup>5</sup>

Technological solutions already exist to verify age at point of sale, such as Australia Post's Digital ID. There is no excuse for Liquor & Gaming NSW to omit this crucial safeguarding element in its consideration of the risks of OSHD.

## Specific measures are needed to address the risks of rapid/mobile outlet delivery

It is crucial that there are measures to specifically address the risks of rapid/mobile outlet (i.e. refrigerated van) delivery. There are currently none in the discussion paper. Rapid delivery has a specific, heightened risk profile.

The rapid delivery business model enables impulsive purchases and enables continuation of an existing alcohol session when the alcohol supply has been exhausted.

## CASE STUDY: JIMMY BRINGS

**Businesses offering rapid delivery such as Jimmy Brings, explicitly market their service as a way to keep the party going, appealing to a customer base that are already intoxicated:**

*'No more debating whether this house party should meet its untimely end because the booze has almost run out!'<sup>6</sup>*

*'So let us help you never get off the couch when you don't feel like it, or get behind the wheel when you've had one too many drinks!'<sup>7</sup>*

*'We're also always happy to help if you're throwing a belter of a house party and the esky is looking empty but you can't leave to get to the bottle shop! We also want to help our mates make the best decisions and never get behind the wheel when you've had one too many – let us bring the booze to you instead!'<sup>8</sup>*

*'Maybe you underestimated how many bottles of wine the girls night in would require, or if your house party just needs a boost with a selection of wine, beer and spirits, we'll have you covered!'<sup>9</sup>*

*'When your order is placed, you can expect it at your doorstep in under 30 minutes. The mood of the party will have no time to waver.'<sup>10</sup>*

*'If there's one guy who knows how to keep the party alive, it's Jimmy.'<sup>11</sup>*

**Jimmy Brings delivers within 30 minutes all over Sydney:**

*'We have drivers all over town in our awesome refrigerated vans'<sup>12</sup>*

*'So all over Sydney – if you're in the Inner West, Northern Beaches, the Lower North Shore, Eastern Suburbs, The Shire, you can get alcohol delivered in under 30 minutes! Give it a go – Jimmy would love to come over to your place.'<sup>13</sup>*

This business model and style of marketing is very concerning and inconsistent with harm minimisation principles and the responsible service of alcohol. A business that explicitly appeals to a customer base of drinkers who are already intoxicated cannot be trusted to prevent delivery to intoxicated people.

Australian research shows that 28 per cent of people who received a rapid alcohol delivery (within two hours) would have otherwise had to stop drinking alcohol, and that 69 per cent drank at a risky level on the occasion of receiving a rapid delivery. Twenty-two per cent of people who received a rapid delivery said part of the reason for using the service was because they were over the blood alcohol limit to drive. The research also shows that people who recently received a rapid alcohol delivery were more likely to drink alcohol at risky levels in general, compared to people who recently received a non-rapid alcohol delivery.<sup>14</sup>

The more intoxicated a person is, the more likely they are to harm themselves or others. Alcohol intoxication fuels death<sup>15</sup>, suicide<sup>16</sup>, disease<sup>17</sup>, injury<sup>18</sup>, violence<sup>19</sup>, domestic violence<sup>20</sup>, mental illness<sup>21</sup>, road accidents<sup>22</sup>, child neglect and abuse<sup>23</sup>. Therefore, it is in the best interests of the individual user, and people in their environment, if the supply of alcohol can be disrupted, rather than perpetuated.

Liquor & Gaming NSW should mandate a delay of at least two hours between purchase and home delivery of alcohol to prevent enabling the continuation of an existing alcohol session.



## Alcohol should not be delivered late at night

Liquor & Gaming NSW must address trading hours and delivery hours. This is a crucial component of the availability of alcohol and is directly related to risk.

Time is an important factor affecting levels of alcohol harm. Alcohol-related assaults increase substantially between 6pm and 3am (peaking between midnight and 3am), with 37 per cent of alcohol-related assaults occurring in the home, and more than half (57 per cent) of those being domestic violence.<sup>24</sup> Acute alcohol consumption increases the risk of attempted suicide<sup>25</sup>, and at a population level, greater levels of consumption are associated with increased suicide risk.<sup>26</sup> In Australia, suicides and sudden or unnatural deaths involving alcohol predominantly happen at night, in the home environment.<sup>27</sup>

To reduce the substantial risks of OSHD, there should be no delivery between 10pm and 10am, noting that conditions on licences that specify more restrictive cut-off times should be retained.

## Measures to restrict marketing must be included in the regulatory response

Children under 18 should not be exposed to advertisements for alcohol, including online and digital advertisements.

Evidence shows that adolescents' exposure to alcohol marketing increases their alcohol consumption and increases their likelihood to commence drinking earlier.<sup>28</sup> Drinking alcohol from a young age can damage the developing brain.<sup>29</sup> Alcohol is an addictive psychoactive drug that diminishes responsible decision-making, leading to greater likelihood of risky behaviours, thereby magnifying the vulnerabilities of children. Alcohol contributes to the three leading causes of death among adolescents: unintentional injuries, homicide and suicide.<sup>30</sup>

Businesses should take all available steps to prevent their alcohol advertisements being seen by children, including online and digital advertisements, and governments should ensure a regulatory framework that protects children from alcohol advertising.

Liquor & Gaming NSW should ensure that alcohol advertisements, including online and digital ads, are restricted to viewing by those over 18 years of age. In addition, alcohol companies and other data collectors should not be permitted to collect, use or disclose children's data for online profiling or targeted marketing.

Marketing restrictions are also needed for vulnerable people of any age. There is evidence that some population groups are especially vulnerable to the effects of both alcohol and alcohol advertising.<sup>31,32</sup> Targeted marketing using social media or email enables alcohol companies to reach individuals through their personal devices at times and locations when they are likely to be susceptible to the suggestion of a home delivery. This marketing is based on users' personal data including previous purchasing habits.

This puts vulnerable people at heightened risk, such as dependent drinkers, those living with dependent drinkers, and those experiencing mental ill-health. People's vulnerabilities should not be exploited to sell alcohol. Consumers should have knowledge of and control over their data, including the ability to delete data. Consumers should also be able to self-exclude from marketing and online sales. Alcohol companies and other data collectors should not be permitted to act (whether consciously or through an algorithm) upon data that reveals vulnerabilities in order to target marketing or offers.

## People should not be able to purchase alcohol using 'buy now pay later' services

The practice of paying a purchase off in instalments over time subverts established pricing mechanisms designed to minimise harm to public health from alcohol, by enticing the consumer with a much lower upfront price. There is a substantial risk that this will simultaneously increase alcohol

and credit dependency. Liquor & Gaming NSW should prohibit businesses from offering the use of 'buy now pay later' services for alcohol purchases, including for same-day delivery.

## Comments on eight new regulatory controls for same-day delivery services in NSW

### 1. Same-day delivery to be defined under the Liquor Act 2007

- 'Same-day' needs more careful consideration to account for deliveries taking place in the early hours of the next day. While licence arrangements may technically prevent this, the definition needs to be future-proof, allowing for possible changes to licences. The definition should incorporate deliveries made up until 10am the following day.
- More information is needed on what 'limited exceptions' are proposed. Any exception should also specify a limit on the quantity of alcohol that could be delivered.
- The definition seems to rely upon the fact that the Liquor Act already prohibits delivery of liquor from unlicensed premises. However, it is possible that this law is being routinely breached. For instance, in the case of rapid delivery, these orders are being fulfilled by refrigerated vans. These are essentially mobile packaged liquor outlets. Liquor & Gaming NSW need to be clear about how these businesses are operating and whether they are licensed or unlicensed.
- Experience in other states has shown the need for strong, future-proofed definitions. For example there have been reports of third party services such as Airtasker delivering alcohol unlicensed in Victoria.<sup>33</sup> A strong definition of same-day delivery needs to take into account new and emerging technologies and business models.

### 2. Prohibit all same-day deliveries from being left unattended

- FARE strongly supports this proposal.
- However, there is no justification for it to apply only to same-day deliveries. It should apply to all alcohol deliveries. The new Northern Territory Liquor Regulation in effect prohibits unattended deliveries at any time.
- It is impossible to check ID of the receiving person unless deliveries are collected in person. Many companies for a variety of goods require that goods are not left unattended, and businesses, including Australia Post and many delivery services, are set up to enable this to happen.
- The discussion paper outlines that there are different risk profiles with different OSHD business models, such as interstate wineries who typically do not offer same-day delivery. Liquor & Gaming NSW should be careful if considering any exemptions for specific business models, given that market disruption is still taking place. For example, a recently established business *Wine Depot* allows interstate wineries to store stock in-state in a depot in order to offer more rapid delivery.

### 3. Require all persons making same-day deliveries to have an understanding of responsible supply principles

- FARE would support option 2 if the training was mandatory, accredited and was accompanied with Controlled Purchase Operations.
- There is no justification for RSA training to be any less robust for the OSHD environment than it is for the on-premise or takeaway liquor environment, since there is no evidence that the practice is any less risky. In fact, there is evidence to the contrary; a 2019 research study of the ways people use OSHD services to purchase alcohol, found that more than one-third of



respondents aged 25 years and under did not have their ID checked when receiving their last order.<sup>34</sup>

- There is no justification for RSA training to only apply to same-day deliveries; obligations not to deliver to minors or intoxicated people still apply to a next day delivery.
- Any RSA course should be developed independently of the alcohol industry, be accredited and mandatory.
- Liquor & Gaming NSW must recognise that RSA has limited effectiveness and must not be relied upon as a stand-alone option. At worst, RSA can give the impression of due diligence, thereby preventing effective risk mitigation measures.
- It is important to note that RSA training is not the same as a guarantee that intoxicated or underage people will not be served, and should not be the main risk mitigation measure for OSHD.
- RSA training has been shown to be only partially effective, with research showing that staff in licensed premises continue to serve intoxicated patrons. Deakin University's Professor Peter Miller found at on-licensed premises in Australian night-time entertainment districts that in the overwhelming majority of instances (84.6 per cent of cases), venues continued to serve highly intoxicated patrons when they ordered drinks. This research was conducted across five Australian cities in on-licence venues. It found that levels of intoxication increased throughout the night, resulting in a substantial proportion of people (71-75 per cent) being intoxicated by 2am. Of these people, between 10 and 25 percent appeared too intoxicated to remain in the venue. These rates were consistent across all types of venue.<sup>35</sup>
- Findings are also consistent with international studies which demonstrate that while RSA training improved knowledge and attitudes among staff, there was little actual change in their behaviour.<sup>36</sup>
- In addition, it must be recognised that the delivery agent is in a much riskier situation than a person working in a licensed premise, who is in a familiar environment, with the support of other staff, assistance alarms and CCTV cameras, and may have had the opportunity to observe the customer over several minutes or hours. In contrast, the delivery agent is in an unfamiliar environment, on private property, alone, possibly outnumbered, and expected to make a complex decision about intoxication in a matter of seconds. It is not safe, fair or logical to put all risk mitigation obligations on the shoulders of a delivery agent. Given these challenges, there is no good reason to suspect that RSA training will be successful in the OSHD environment where it has failed in the licensed premise environment.
- Liquor & Gaming NSW must not rely on RSA to prevent deliveries to underage and intoxicated people.
- To maximise effectiveness, RSA training must be accompanied by a strong enforcement framework, including Controlled Purchase Operations.

#### **4. Introduce an offence for any person that makes a same-day delivery to an intoxicated person**

- FARE supports this proposal.
- However, there is no justification for this to only apply to same-day deliveries; the obligation not to deliver to an intoxicated person still applies to a next day delivery.
- While this measure is useful as a deterrent, it is important to recognise that breaches of this law are unlikely to be reported to the police or the regulator, given that it is against the interests of the deliverer or the intoxicated person to do so. It is crucial that Liquor & Gaming NSW makes provisions to undertake Controlled Purchase Operations, and prosecutes offenders as a result, in order to increase compliance from businesses.

## **5. For all same-day deliveries, licensees to keep a record of any non-delivery and the reason**

- FARE would support this proposal if it was broadened to include all delivery and if licensees were mandated to provide the proposed records to the regulator on a regular basis.
- While this is a step in the right direction, there is no justification for this to apply only to non-deliveries. In fact, it could be detrimental to risk mitigation; if it applies only to non-deliveries, the added paperwork of logging a non-delivery could create a disincentive to withhold delivery. This would undermine the intention of proposed measure six.
- Liquor & Gaming NSW has acknowledged the lack of information about how OSHD businesses are operating in NSW, and that this is a barrier to developing appropriate regulation. If this measure applied to all deliveries, it would not only remove the disincentive, but also create a valuable data source which would assist the regulator to implement evidence-based policy in future. This data source would be crucial to conducting the proposed evaluation after two years.
- Licensees should be mandated to provide the proposed records to the regulator on a regular basis, for example quarterly or annually.

## **6. Introduce an offence for any licensee that causes or permits an arrangement that financially penalises a delivery agent for refusing to make a same-day delivery on the basis that it would contravene liquor legislation that prohibits supply to a minor or an intoxicated person.**

- FARE supports this measure in principle.
- While the intent is sound, it is not clear how this would work in practice. What would constitute an offence – would the delivery agent have to be fined by their employer in order for it to constitute an offence? It seems that the only way this could really work is if delivery agents are no longer paid based on the number of deliveries made.

## **7. Wherever alcohol is being advertised for same-day delivery, an avenue for self-exclusion – either temporarily or permanently – must be provided on the operator’s website (and wherever else an order may be made).**

- FARE would support this proposal if it was accompanied by measures to safeguard vulnerable people from targeted marketing.
- Self-exclusion is not a sufficient protection for vulnerable people such as dependent drinkers. The proposed measure is a very narrow approach to safeguarding.
- There are a number of ways that targeted marketing could be restricted which would be much more effective at safeguarding vulnerable people. A number of recommendations are made in this submission.
- There is no justification for this to only apply to same-day deliveries; it should apply to all online sales.
- Use of the term ‘problem drinkers’ is inappropriate because it is stigmatising and places blame on the individual. This term is outdated; a more appropriate term now used by the public health and alcohol treatment sectors is ‘dependent drinker’.

## **8. Restrict same-day deliveries to residential and business addresses only (and not to a public place).**

- FARE supports this proposal.

- However, there is no justification for it to apply only to same-day deliveries. It should apply to all deliveries.

## Potential supporting administrative changes

### 10. Liquor & Gaming NSW to develop and release industry guidance for same-day deliveries.

- FARE supports this in principle, as it could help to disseminate the new rules to relevant businesses.
- However, it should not be relied upon as a method of compliance or enforcement; businesses' compliance with regulation should be regularly monitored by Liquor & Gaming NSW, including through the use of Controlled Purchase Operations.

### 11. Licensing processes to be enhanced to seek more information in applications about the nature of any proposed same-day alcohol delivery model.

- FARE agrees that licensing processes should be enhanced in response to market disruption.
- There should be a specific liquor licence or licence condition for delivery so that the regulator knows how many delivery operators there are in the jurisdiction and their hours and areas of operation. This would reflect the fact that there is a specific risk profile for delivery. This would also create a policy lever that could be used in future, for example to raise the delivery licence fee. Although there is an 'online packaged liquor licence' category, some operators conducting delivery services use a regular packaged liquor licence.
- A public interest test/community impact statement should be required for this liquor licence or licence condition, taking into account cumulative impact and density of liquor outlets in the delivery radius. The delivery radius is the key element of relevance to community impact, and not the location of the warehouse which may be on an industrial estate at a distance from residential areas. Licensees will have already assessed their primary trade area when considering the financial viability of their business model. Therefore, this would pose no extra onus on applicants as they would have already determined this information. It would also make the licence application process more transparent by increasing the number of community members within the area who are notified.
- Considering the heightened risks of OSHD, a risk loading should be applied for home delivery in keeping with NSW's approach to risk based licencing.
- If rapid/mobile delivery continues, a further risk-loading should be applied for rapid/mobile delivery, to reflect the significant additional risk posed by this business model.

## Interstate delivery issues

- The discussion paper astutely outlines the range of challenges posed by interstate delivery. However, the proposed options to address these challenges are insufficient.
- FARE supports the idea of interstate businesses requiring a NSW licence to deliver alcohol in NSW.
- However, option 1 seems to be a high risk method of achieving this, with huge potential for unintended consequences. FARE does not support removing the provision that requires the licensee to be responsible for the personal supervision and management of the licensed premises.
- While option 2 is preferable to option 1, it does not make interstate licensees sufficiently accountable to the NSW regulator and to the NSW community who will have to pick up the pieces and the bill from resulting harm caused by alcoholic products.
- For instance, licence fees should be applicable, providing a financial deterrent and recognising that the harm is taking place in-state and will incur costs to the state and its residents. The regulator and the community should have an opportunity to object to the liquor licence as they would in-state. There needs to be recognition that the interstate licensees are contributing to cumulative impact and outlet density in-state.
- Interstate businesses should have to comply with local laws when operating in-state.
- Interstate businesses should have to comply with last delivery times of comparable in-state licensees when operating in-state.
- Any interstate business offering same-day delivery in-state should always have an in-state liquor licence.

## Recommendations to adequately address the risks presented by OSHD

1. All OSHD, including same-day delivery, must be appropriately regulated with independent monitoring and enforcement by Liquor & Gaming NSW.
2. The NSW Government should introduce provisions in the Liquor Act allowing controlled purchase operations to assist with compliance, monitoring and enforcement.
3. Liquor & Gaming NSW should require businesses to submit sales data, delivery data and any other information needed to gain a clear understanding of the risks and trends of these business models.
4. To recognise the distinct risk profile of home delivery, a specific licence or licence condition should be required, with additional risk-loadings for delivery and rapid delivery.
5. Age verification should be conducted at point of purchase on the website or app, and at point of delivery.
6. All OSHD of alcohol must be received by the verified purchaser and not left unattended. Delivery must only be made to residential and commercial addresses and not to a public place.
7. An offence to deliver any alcohol at any time to intoxicated and/or underage persons should be introduced.
8. Restrictions on delivery hours should be made, preventing home delivery of alcohol between 10pm and 10am, and introducing an offence to deliver within these hours. Conditions on licences that specify more restrictive cut-off times should be retained.
9. There must be no rapid home delivery of alcohol, with a delay between purchase and delivery of minimum two hours to prevent the continuation of an existing alcohol session.
10. Children under 18 should not be exposed to advertisements for alcohol, including online and digital advertisements.
11. Businesses should not act upon data that reveals vulnerabilities, such as alcohol dependency, and should not collect or use children's data under any circumstance.
12. People should not be able to purchase alcohol using 'buy now pay later' services.

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